2-21-2008

Scott Beckstead Real Estate Co. v. City of Preston Clerk's Record v. 1 Dckt. 34644

Vol. 1 2

LAW CLERK

IN THE SUPREME COURT OF THE STATE OF IDAHO

SCOTT BECKSTEAD REAL ESTATE COMPANY

Plaintiff/Appellant/Cross-Respondent

vs.

CITY OF PRESTON

Defendant/Respondents/Cross-Appellants

DON L. HARDING District Judge

Appealed from the District Court of the SIXTH Judicial District of the State of Idaho, in and for FRANKLIN County.

STEVEN R. FULLER

ATTORNEY AT LAW

Attorney _____ For Appellant _____

CLYDE G. NELSON

ATTORNEY AT LAW

Attorney _____ For Respondent _____

Filed this FILED - COPY day of

2008. FEB 21 2008

Clerk

Deputy

Supreme Court _____ Court of Appeals _____
Entered on ATS by: _____

34604

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

* * * * * *

SCOTT BECKSTEAD REAL ESTATE COMPANY, an Idaho Corporation, and SCOTT BECKSTEAD, individually, Plaintiffs/Appellants/Cross-Respondents, vs. CITY OF PRESTON, a Municipal Corporation, Defendant/Respondent/Cross-Appellant.	Supreme Court No. 34644

CLERK'S RECORD ON APPEAL

Appeal from the District Court of the Sixth Judicial District
of the State of Idaho, in and for the County of Franklin

Honorable Don L. Harding
District Judge

APPEARANCES:

Steven R. Fuller
Steven R. Fuller Law Office
PO Box 191
Preston, ID 83263

Attorney for Appellant

Clyde G. Nelson
Attorney at Law
PO Box 797
Soda Springs, ID 83276

Attorney for Respondent

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STEVEN R. FULLER – 2995
Steven R. Fuller Law Office
24 North State
P.O. Box 191
Preston, ID 83263
Telephone: (208) 852-2680
Facsimile: (208) 852-2683

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

SCOTT BECKSTEAD REAL ESTATE COMPANY, an Idaho Corporation, Plaintiff, vs. CITY OF PRESTON, a Municipal Corporation, Defendant.	CASE NO. CV-06-390 **COMPLAINT**

COMES NOW, the Plaintiff, Scott Beckstead Real Estate Company, and for a cause of action against the Defendant, The City of Preston, Idaho, alleges as follows:

GENERAL ALLEGATIONS

1. Scott Beckstead Real Estate Company is a corporation duly organized and existing under the laws of the State of Idaho and doing business in real estate sales and development.

2. The City of Preston is a municipal corporation located in Franklin County, Idaho and is a political subdivision of the State of Idaho.

3. Scott Beckstead is the principal owner of Scott Beckstead Real Estate Company (hereafter Scott Beckstead Real Estate Company and Scott Beckstead shall be collectively referred to as "Beckstead").

4. In July of 2002, Beckstead acquired certain real property located within the boundaries of the City of Preston for the purpose of real estate development.

5. Beckstead submitted to the City of Preston a preliminary plat for approval in December of 2002 for a subdivision to be located at approximately 600 East Oneida Street in the City of Preston. The proposed subdivision was named Creamery Hollow Estates Subdivision.

6. On July 28, 2003, the City of Preston approved the final plat of the Creamery Hollow Estates Subdivision.

7. One of the conditions imposed by the City of Preston for approval of the Creamery Hollow Estates Subdivision, required Beckstead to install 1,800 feet of ten-inch pipe along 800 East in Preston, Idaho, a location north of Oneida Street, entirely separate from and not connected to the Creamery Hollow Estates Subdivision.

8. The ten-inch water line was installed on 8th East in Preston by Beckstead in October of 2003.

9. In October of 2004, Beckstead learned that a water connection or connections were being sold by the City and connected to the water line which Beckstead had installed along 800 East in Preston and he spoke to the Preston City Engineer, Darrell Willburn about reimbursement of the costs of the water line as set forth in City Ordinance §16.28.030 B. He was told by the City Engineer that this was the type of situation for which

the ordinance was written and suggested that he request reimbursement from the City of Preston.

10. By letter dated October 22, 2004, Beckstead made a claim to the City of Preston for reimbursement of his "off-site" improvements as set forth in the City ordinance. A copy of said letter is attached hereto as Exhibit "A" and incorporated herein by reference.

11. By letter dated November 16, 2004, the City of Preston, through the City Attorney, denied the claim for reimbursement on the basis that no "agreement" had been approved prior to the development. (See Exhibit "B" attached hereto)

12. Beckstead contacted legal counsel to ask the City of Preston to reconsider its position which was done by letter dated April 11, 2006, a copy of which is attached hereto as Exhibit "C" and incorporated herein by reference.

13. The City of Preston declined to meet with Beckstead or his counsel but instead reaffirmed their position that they would make no reimbursement to Beckstead for the improvements he had made to the Preston City water system as required under the ordinance.

14. The applicable Preston City ordinance, §16.28.030 B reads as follows:

> **Whenever any intervening property ("off-site") is benefitted by the installation of any of the required facilities, the subdivider may pay the costs of such facilities to the city, such costs to be determined by competitive bids solicited by the city, together with verified engineering costs required therefore. The City shall thereafter enter a deferred credit in its books and records and shall charge the benefitted intervening property owners the fee rates for sewer and water connections in effect at the time such connections are made. Such fees shall then be returned to the subdivider to reimburse the costs of the installation of the facilities; such agreement for reimbursement shall extend for a maximum period of five years from initial date of agreement after which time no further reimbursement shall be made to the subdivider. The city may also elect to reimburse the subdivider for**

such "off-site" facilities in full or in part after the subdivider has furnished the City with acceptable evidence that an agreed number of housing units are occupied. No interest shall accrue or become payable on such reimbursement. Engineering drawings showing benefitted property shall be prepared by the city engineer and copies forwarded to the sewer, water and streets departments of the City. (Ord. 97-18 §§ 1, 2, 1997; Ord. 391 Ch. 4 §3, 1974).

15. Beckstead incurred $7,803.60 in out-of-pocket costs for labor and materials used in the installation of the pipeline along 8th East for which he seeks reimbursement from the City of Preston. He also provided his own labor for which a reasonable charge would be $2,800.00.

16. Each connection to the water line installed by Beckstead along 800 East in Preston is a new claim against the City of Preston pursuant to Preston City Ordinance §16.28.030 B for a period of five years.

17. Beckstead has been required to retain an attorney and, pursuant to *Idaho Code* §12-117, Beckstead should be entitled to an award of his reasonable attorneys fees and costs incurred in this action.

FIRST CAUSE OF ACTION

18. Beckstead realleges and incorporates herein by reference paragraphs 1-17 of the his general allegations as if fully set forth herein.

19. The City of Preston should be required to pay to Beckstead the sum of $10,603.60 together with interest thereon from the date water connections were made to the water line along 800 East in Preston by intervening property owners who benefitted from the installation of said water line at the pre-judgment legal rate of 12% per annum, until paid.

SECOND CAUSE OF ACTION

Writ of Mandamus

20. Beckstead realleges and incorporates herein by reference paragraphs 1-17 of the general allegations as if fully set forth herein.

21. Beckstead has no adequate remedy at law or equity sufficient to require the City of Preston to comply with its own ordinance §16.28.030 B.

22. Beckstead requests that this Court enter a Writ of Mandamus ordering the City of Preston to pay over such sums as have been or shall be collected from persons connecting to the water line installed by Beckstead along 8th East pursuant to said ordinance for a period of five years from October of 2003 not exceeding $10,603.60.

UNJUST ENRICHMENT

23. Beckstead realleges and incorporates herein by reference paragraphs 1-17 of his general allegations as if fully set forth herein.

24. As part of the requirements for the approval of the Creamery Hollow Estates Subdivision, Beckstead installed at his own expense 1800 feet of ten-inch water line along 8th East, an area not connected to Creamery Hollow Estates Subdivision.

25. To Beckstead's knowledge and belief, City of Preston has collected water connection fees from new users who have connected to the water line installed by Beckstead and retained all of the water connection fees without reimbursing Beckstead for the additional costs he incurred in the amount of $10,603.60.

26. If the City of Preston were allowed to retain the water connection fees without reimbursing Beckstead, the City of Preston would be unjustly enriched having received a windfall at the expense of Beckstead.

WHEREFORE, Plaintiff prays for a judgment against the Defendant as follows:

1. For the sum of $10,603.60 together with interest thereon at the pre-judgment rate from the date water connection(s) were made by intervening property owners to the water line installed by the Plaintiff on 8th East in Preston, Idaho;

2. For a Writ of Mandamus ordering the City of Preston to pay over to the Plaintiff, the sum of $10,603.60 together with interest thereon as aforesaid from such water connection fees collected in the past or which may be collected in the future pursuant to Preston City Ordinance §16.28.030 B, and

3. For Beckstead's reasonable attorneys fees and costs incurred in this action, and

4. For such other and further relief as the Court finds equitable in the premises.

DATED this 8th day of September, 2006.

STEVEN R. FULLER
Attorney for Plaintiff

VERIFICATION

STATE OF IDAHO)
) ss.
County of Franklin)

SCOTT BECKSTEAD, being first duly sworn on oath, deposes and says:

That he is a principal owner of Scott Beckstead Real Estate Company, the Plaintiff, in the above-entitled action; that he has read the foregoing Complaint and knows the contents thereof; that the same is true of his own knowledge except as to matters stated therein on his information and belief and as to those matters he believes them to be true.

SCOTT BECKSTEAD

SUBSCRIBED AND SWORN to before me this 8th day of September, 2006.

STEVEN R. FULLER
NOTARY PUBLIC
STATE OF IDAHO

NOTARY PUBLIC for State of Idaho
Residing at: Preston, Idaho
Comm. Exp.: 1-21-11

EXHIBIT "A"

Farm Lands and Ranches
Residential Properties

Income Properties
Business Opportunities

SCOTT BECKSTEAD REAL ESTATE CO.

32 WEST ONEIDA - PRESTON, IDAHO 83263
PHONE (208) 852-3199

October 22, 2004

Mayor Neal Larson
City of Preston
70 West Oneida
Preston, Idaho 83263

Dear Mayor Larson,

Under the Preston Subdivision Ordinance Section 16.28.030 paragraph B, a subdivider is entitled to reimbursement for costs associated with "off site" improvements required by the city in the process of subdivision approval. One such "off site" improvement was a water line on 800 East that was required of me to install for approval of the Creamery Hollow Estates Subdivision. I understand that several water connections have been made to that line.

I would like to arrange a time that we could meet to discuss the process of such reimbursement. Also, if there is any information that you may need from me showing actual costs of installation of that line, please let me know.

I can be reached at 852-3199 which is the office number or on my cell phone which is 339-1512. I would be happy to meet you at any time.

Sincerely,

Scott L. Beckstead

Scott L. Beckstead

REALTOR

EXHIBIT "B"

CITY OF PRESTON

CLYDE G. NELSON
CITY ATTORNEY
172 S. MAIN
P. O. BOX 797
SODA SPRINGS, IDAHO 83276

TELEPHONE
(208) 547-2135

FACSIMILE
(208) 547-2136

November 16, 2004

Scott Beckstead
Beckstead Real Estate Co.
32 West Oneida
Preston, ID 83263

Re: Subdivision Ordinance / Creamery Hollow Subdivision

Dear Scott:

Mayor Larson has asked that I reply to your letter of October 22, 2004, in regard to your request to be reimbursed for "costs associated with 'off site' improvements required by the city in the process of subdivision approval." You are suggesting that you are entitled to reimbursement for improvements on a waterline on 800 East Street.

The section to which you refer is §16.28.030(B). That section reads as follows:

"16.28.030 B. Whenever any intervening property ("off-site") is benefitted by the installation of any of the required facilities, the subdivider may pay the cost of such facilities to the city, such costs to be determined by competitive bids solicited by the city together with verified engineering costs required therefor. The city shall thereafter enter a deferred credit in its books and records and shall charge the benefited intervening property owners the fee rates for sewer and water connections in effect at the time such connections are made. Such fees shall then be returned to the subdivider to reimburse the cost of the installation of the facilities; such agreement for reimbursement shall extend for a maximum period of five (5) years from initial date of agreement after which time no further reimbursement shall be made to the subdivider. The city may also elect to reimburse the subdivider for such "off-site" facilities in full or in part after the subdivider has furnished the city with acceptable evidence that an agreed number of housing units are occupied. No interest shall accrue or become payable on such reimbursement. Engineering drawings showing benefited property shall be prepared by the city engineer and copies forwarded to the sewer, water and streets department of the city."

This section does not require the city to reimburse you and repeatedly refers to an agreement entered into between the parties which would allow for reimbursement to the subdivider if the subdivider had paid the City for the construction improvements. You did not.

Re: Subdivision Ordinance / Creamery Hollow Subdivision

The agreement must be approved prior to the development. In addition to the section requiring a contract prior to the construction, the cost of the construction is to be determined by "competitive bids solicited by the city together with verified engineering costs required therefor." If you had desired reimbursement for these improvements, it would have been necessary that an agreement be executed, that competitive bids be solicited pursuant to that agreement and that an engineer verify the costs required for the construction. There was no agreement, there were no competitive bids, no verified engineering study, and no payment by you to the City.

This section is similar to those requirements set forth for local improvement districts. (Chapter 17, Title 50, Idaho Code). To create a local improvement district there must first be a resolution to create the district. Included within the resolution is a requirement that the total costs and expenses of the project and percentage that will be paid by the city and the local improvement district be included. A determination must be made as to which properties will be benefitted by the improvements, and how they will be benefitted. For example, the engineer could determine that an intervening piece of property could not be developed, and only one connection would be attributed to that property. In another intervening piece of property, the engineer could determine that the property could be developed into one hundred lots. An amount would be paid to the City, but the amount paid to you as reimbursement, would be based upon the total number of lots that could be developed on the intervening properties verses the number of lots which you have developed. In addition, you only paid for a portion of the cost of the line, and any payment by the City to you would have to based upon a percentage of the total cost of the line.

I think that the reasons set forth above are quite clear as to why your request would have to be rejected. I hope this letter answers your questions as to the City's position. If you have any additional questions, please feel free to contact me.

Sincerely,

CLYDE G. NELSON

CGN:jn
cc: Mayor and City Council
Darrell Wilburn

EXHIBIT "C"

STEVEN R. FULLER LAW OFFICE
Attorneys and Counselors at Law
24 NORTH STATE ♦ P.O. BOX 191 ♦ PRESTON, IDAHO 83263

STEVEN R. FULLER*
R. TODD GARBETT

*Also Member of Utah Bar

TELEPHONE: (208) 852-2680
FAX: (208) 852-2683

April 11, 2006

Mayor and City Council
City of Preston
70 West Oneida
Preston, ID 83263

Re: ***Scott Beckstead Real Estate Company***
Off-site Improvements Reimbursement

Dear Mayor and City Council:

Please find the following enclosed documents:

1) Preston City Ordinance 16.28.030 B;
2) Letter dated October 22, 2004 from Scott Beckstead to the City;
3) Letter dated November 16, 2004 from Clyde G. Nelson to Scott Beckstead;
4) Letter dated April 8, 2003 from Darrell Wilburn, Preston City Engineer to DEQ;
5) Memo dated December 31, 2002 from Darrell Wilburn to Scott Beckstead.

Mr. Scott Beckstead of Scott Beckstead Real Estate Company has requested that I respond to the City of Preston regarding his request of October 22, 2004 for reimbursement for "off-site" improvements required by the City in the approval of his Creamery Hollow Estates Subdivision. He asked me specifically to review Preston City Ordinance, Section 16.2.030(B). He has also asked me to review a letter sent by Preston City Attorney, Clyde Nelson, in which Mr. Beckstead's request for reimbursement is denied. Mr. Beckstead is requesting the City reconsider its position and provide for reimbursement for a water line on 800 East that was installed by Mr. Beckstead as a requirement by the City for approval of his subdivision.

I have enclosed a copy of the applicable Preston City Ordinance and although I believe it has since been repealed, there is no question it was in effect at the time Mr. Beckstead's subdivision was approved and he installed the water line at his expense.

The first sentence of the ordinance reads:

> **Whenever any intervening property ("off-site") is benefitted by the installation of any of the required facilities, the subdivider may pay the cost of such facilities to the City, such costs to be determined by competitive bids, solicited by the City, together with verified engineering costs required therefore.** (emphasis added)

It is clear that the purpose of the ordinance is expressed in the first sentence which allows for reimbursement to a subdivider who installs and pays for off-site improvements which will ultimately benefit other developers. The intent of the ordinance was to have other developers share in such costs rather than making one person carry the entire burden. In Mr. Nelson's reading of the ordinance, he states that it is a requirement for the subdivider to pay the costs of the facilities to the City, with such costs to be determined by competitive bid and verified engineering costs included. This is not what the ordinance says. The ordinance states the subdivider "may" be required to pay the costs of such facilities to the City, etc. The use of the word "may" makes the requirement of this sentence discretionary, not mandatory. In this case, the City did not require Mr. Beckstead to pay the City for the costs, but instead he paid for the entire costs associated with installing the water line. At no time did the City indicate to Mr. Beckstead that he must pay the cost to the City first.

The second sentence of the ordinance contains mandatory, not discretionary language, through the use of the word "shall". It states:

> **The City shall thereafter enter a deferred credit in its books and records and shall charge the benefitted intervening property owners the fee rates for sewer and water connections in effect at the time such connections are made.** (emphasis added)

The City, by its own ordinance, has created a rule that it must follow if a developer has installed an off-site water line that benefits intervening property owners. The City must enter a deferred credit in its books and charge the intervening property owners as outlined in this sentence. Once this is done, the ordinance continues:

> **Such fee shall then be returned to the subdivider to reimburse the costs of the installation of the facilities; such agreement for reimbursement shall extend for a maximum period of five years from initial date of agreement after which time no further reimbursement shall be made to the subdivider.** (emphasis added)

Again, the ordinance uses the word "shall" indicating that the fees must be returned to the subdivider to reimburse him for the costs he has incurred.

The City has taken the position that the word "agreement" in the ordinance means that some type of written document should have been drafted and entered into between the parties in order to make this ordinance effective. Mr. Beckstead was not presented with any such requirement at the time he put in the off-site water line, nor was he given any agreement in writing by the City. A written agreement was not necessary. A City does not require a written agreement with each of its residents to obey traffic ordinances or other laws and no written agreement is necessary to give effect to the plain wording and intent of this ordinance.

The primary rule governing the interpretation of an ordinance is to ascertain and determine the intent of the ordinance from the plain meaning of its words. This is a rule of law that has been established by our Courts for many years. If the clear intent of this ordinance was to reimburse those who had created off-site improvements which benefit others, then how can it be said that the installation of the off-site water line by Mr. Beckstead was not within the clear intent and purpose of this ordinance. Any ambiguity in the ordinance is to be construed in such a way as to not defeat its purpose or intent.

Since the installation of the water pipeline by Mr. Beckstead, he believes there have been at least four water connections made to the pipeline he installed at his expense. We can only assume that these developers paid their water connection fees to the City, but no reimbursement has been made to Mr. Beckstead.

Mr. Beckstead is asking the City to re-examine its position with regards to its denial of reimbursement to him. Of course, Mr. Beckstead does have recourse to the court system and possibly a further reimbursement of his attorneys fees and costs as provided in *Idaho Code* §12-117, but if we can come to a reasonable solution without litigation, it would benefit both parties. If the City agrees to discuss this matter, we ask that this matter be placed on the agenda of the next available council meeting which can be held in executive session, if the council so desires, since this matter does involve a legal dispute. Again, we ask the Mayor and City Council to look at this ordinance, not in a way of finding some

method or loop hole to escape its responsibility, but instead to look at its intent and determine whether or not reimbursement for the water line installed by Mr. Beckstead was a purpose for which this ordinance was enacted.

Sincerely,

Steven R. Fuller
Attorney at Law

srf:sh

cc: *Scott Becktead Real Estate Company*

EXHIBIT "B"

CITY OF PRESTON

CLYDE G. NELSON
CITY ATTORNEY
172 S. MAIN
P. O. BOX 797
SODA SPRINGS, IDAHO 83276

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cc: Mayor and City Council
Darrell Wilburn

EXHIBIT "C"

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Again, the ordinance uses the word "shall" indicating that the fees must be returned to the subdivider to reimburse him for the costs he has incurred.

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Sincerely,

Steven R. Fuller
Attorney at Law

srf:sh

cc: Scott Becktead Real Estate Company

EXHIBIT D

NOTICE OF CLAIM

Claimant: Scott Beckstead
Scott Beckstead Real Estate Company

To: City Clerk, Mayor and City Council
City of Preston, Idaho

1. **CONDUCT AND CIRCUMSTANCES REGARDING CLAIM:**

In October, 2003, the Claimant, Scott Beckstead acting on behalf of Scott Beckstead Real Estate Company, installed a ten-inch water line along 1800 East in Preston, Idaho, as a requirement imposed by the City of Preston for approval of a subdivision known as Creamery Hollow Estates. Under the applicable Preston City Ordinance, §16.2.030(B) in effect at the time the water line was constructed, Mr. Beckstead was entitled to reimbursement for the "off-site" improvements made which were to be paid as additional connections were made to the water line over a period of five years. It is the understanding of the Claimant that water connections have been made to the water line along 1800 East in Preston, but no reimbursement has been made to the Claimant. A previous claim was filed by Mr. Beckstead with the City of Preston on October 22, 2004. Each connection to the water line along 1800 East in Preston, Idaho, gives rise to a separate and distinct claim against the City of Preston until full reimbursement has been made. The City of Preston has failed and refused to pay the legitimate claims of the Claimant and has denied him reimbursement pursuant to the set ordinance despite the fact that water connections have been made to the water line along 1800 East.

2. **TIME AND PLACE OF DAMAGE:**

It is the understanding of the Claimant that water connections have been made and water connection fees received by the City of Preston in 2004, 2005 and 2006 which would be sufficient to pay or partially pay the Claimant for the sums he has expended pursuant to the ordinance.

3. **NAMES OF PERSONS OR ENTITIES INVOLVED:**

Scott Beckstead and Scott Beckstead Realty Company.

4. **AMOUNT OF DAMAGES:**

The amount of this claim for labor, costs and materials is the sum of $10,603.60.

RESPECTFULLY SUBMITTED this 31st day of July, 2006, by Steven R. Fuller, Attorney for Scott Beckstead and Scott Beckstead Real Estate Company, 24 North State, Preston, Idaho 83263 - Tel. No. (208) 852-2680.

STEVEN R. FULLER
Attorney for Scott Beckstead and
Scott Beckstead Real Estate Company

cc: Scott Beckstead

STEVEN R. FULLER – 2995
Steven R. Fuller Law Office
24 North State
P.O. Box 191
Preston, ID 83263
Telephone: (208) 852-2680
Facsimile: (208) 852-2683

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

SCOTT BECKSTEAD REAL ESTATE COMPANY, an Idaho Corporation, Plaintiff, vs. CITY OF PRESTON, a Municipal Corporation, Defendant.	CASE NO. CV-06-390 **FIRST AMENDED COMPLAINT**

COMES NOW, the Plaintiff, Scott Beckstead Real Estate Company, and for a cause of action against the Defendant, The City of Preston, Idaho, alleges as follows:

GENERAL ALLEGATIONS

1. Scott Beckstead Real Estate Company is a corporation duly organized and existing under the laws of the State of Idaho and doing business in real estate sales and development.

2. The City of Preston is a municipal corporation located in Franklin County, Idaho and is a political subdivision of the State of Idaho.

3. Scott Beckstead is the principal owner of Scott Beckstead Real Estate Company (hereafter Scott Beckstead Real Estate Company and Scott Beckstead shall be collectively referred to as "Beckstead").

4. In July of 2002, Beckstead acquired certain real property located within the boundaries of the City of Preston for the purpose of real estate development.

5. Beckstead submitted to the City of Preston a preliminary plat for approval in December of 2002 for a subdivision to be located at approximately 600 East Oneida Street in the City of Preston. The proposed subdivision was named Creamery Hollow Estates Subdivision.

6. On July 28, 2003, the City of Preston approved the final plat of the Creamery Hollow Estates Subdivision.

7. One of the conditions imposed by the City of Preston for approval of the Creamery Hollow Estates Subdivision, required Beckstead to install 1,800 feet of ten-inch pipe along 800 East in Preston, Idaho, a location north of Oneida Street, entirely separate from and not connected to the Creamery Hollow Estates Subdivision.

8. The ten-inch water line was installed on 8th East in Preston by Beckstead in October of 2003.

9. In October of 2004, Beckstead learned that a water connection or connections were being sold by the City and connected to the water line which Beckstead had installed along 800 East in Preston and he spoke to the Preston City Engineer, Darrell Willburn about reimbursement of the costs of the water line as set forth in City Ordinance §16.28.030 B. He was told by the City Engineer that this was the type of situation for which

the ordinance was written and suggested that he request reimbursement from the City of Preston.

10. By letter dated October 22, 2004, Beckstead made a claim to the City of Preston for reimbursement of his "off-site" improvements as set forth in the City ordinance. A copy of said letter is attached hereto as Exhibit "A" and incorporated herein by reference.

11. By letter dated November 16, 2004, the City of Preston, through the City Attorney, denied the claim for reimbursement on the basis that no "agreement" had been approved prior to the development. (See Exhibit "B" attached hereto)

12. Beckstead contacted legal counsel to ask the City of Preston to reconsider its position which was done by letter dated April 11, 2006, a copy of which is attached hereto as Exhibit "C" and incorporated herein by reference.

13. The City of Preston declined to meet with Beckstead or his counsel but instead reaffirmed their position that they would make no reimbursement to Beckstead for the improvements he had made to the Preston City water system as required under the ordinance.

14. The applicable Preston City ordinance, §16.28.030 B reads as follows:

> **Whenever any intervening property ("off-site") is benefitted by the installation of any of the required facilities, the subdivider may pay the costs of such facilities to the city, such costs to be determined by competitive bids solicited by the city, together with verified engineering costs required therefore. The City shall thereafter enter a deferred credit in its books and records and shall charge the benefitted intervening property owners the fee rates for sewer and water connections in effect at the time such connections are made. Such fees shall then be returned to the subdivider to reimburse the costs of the installation of the facilities; such agreement for reimbursement shall extend for a maximum period of five years from initial date of agreement after which time no further reimbursement shall be made to**

the subdivider. The city may also elect to reimburse the subdivider for such "off-site" facilities in full or in part after the subdivider has furnished the City with acceptable evidence that an agreed number of housing units are occupied. No interest shall accrue or become payable on such reimbursement. Engineering drawings showing benefitted property shall be prepared by the city engineer and copies forwarded to the sewer, water and streets departments of the City. (Ord. 97-18 §§ 1, 2, 1997; Ord. 391 Ch. 4 §3, 1974).

15. Beckstead incurred $7,803.60 in out-of-pocket costs for labor and materials used in the installation of the pipeline along 8th East for which he seeks reimbursement from the City of Preston. He also provided his own labor for which a reasonable charge would be $2,800.00.

16. Each connection to the water line installed by Beckstead along 800 East in Preston is a new claim against the City of Preston pursuant to Preston City Ordinance §16.28.030 B for a period of five years.

17. Beckstead has been required to retain an attorney and, pursuant to *Idaho Code* §12-117, Beckstead should be entitled to an award of his reasonable attorneys fees and costs incurred in this action.

FIRST CAUSE OF ACTION

Statutory Claim

18. Beckstead realleges and incorporates herein by reference paragraphs 1-17 of the his general allegations as if fully set forth herein.

19. The City of Preston should be required to pay to Beckstead the sum of $10,603.60 together with interest thereon from the date water connections were made to the water line along 800 East in Preston by intervening property owners who benefitted

from the installation of said water line at the pre-judgment legal rate of 12% per annum, until paid.

SECOND CAUSE OF ACTION

Writ of Mandamus

20. Beckstead realleges and incorporates herein by reference paragraphs 1-17 of the general allegations as if fully set forth herein.

21. Beckstead has no adequate remedy at law or equity sufficient to require the City of Preston to comply with its own ordinance §16.28.030 B.

22. Beckstead requests that this Court enter a Writ of Mandamus ordering the City of Preston to pay over such sums as have been or shall be collected from persons connecting to the water line installed by Beckstead along 8th East pursuant to said ordinance for a period of five years from October of 2003 exceeding $10,603.60.

THIRD CAUSE OF ACTION

Unjust Enrichment

23. Beckstead realleges and incorporates herein by reference paragraphs 1-17 of his general allegations as if fully set forth herein.

24. As part of the requirements for the approval of the Creamery Hollow Estates Subdivision, Beckstead installed at his own expense 1800 feet of ten-inch water line along 8th East, an area not connected to Creamery Hollow Estates Subdivision.

25. To Beckstead's knowledge and belief, City of Preston has collected water connection fees from new users who have connected to the water line installed by Beckstead and retained all of the water connection fees without reimbursing Beckstead for the additional costs he incurred in the amount of $10,603.60.

26. If the City of Preston were allowed to retain the water connection fees without reimbursing Beckstead, the City of Preston would be unjustly enriched having received a windfall at the expense of Beckstead.

FOURTH CAUSE OF ACTION

Second Statutory Claim

27. Beckstead realleges and incorporates herein by reference paragraphs 1-17 of his general allegations as if fully set forth herein.

28. In July of 2006, the Plaintiff learned of additional water connections that had recently been made to the water line along 800 East in Preston, Idaho.

29. The Plaintiff submitted a "Notice of Claim" on July 31, 2006, to Defendant requesting reimbursement for offsite improvements made for additional connections to the water line constructed and paid for by the Plaintiff. Said "Notice of Claim" is attached hereto and incorporated herein by reference as Exhibit "D".

30. More than ninety days has elapsed since the Notice of Claim was filed with the City of Preston, but no response was made by the Defendant.

31. Each connection for which reimbursement is sought was made during the five-year period stated under Preston City Ordinance, Section 16.28.030 B.

32. The City of Preston should be required to pay Beckstead the sum of $10,603.60 together with interest thereon from the date water connections were made to the water line along 800 East in Preston, Idaho, by intervening property owners who benefitted from the installation of said water line at the pre-judgement legal rate of 12% per annum, until paid.

FIFTH CAUSE OF ACTION

Request for Declaratory Judgment

33. Plaintiff realleges and incorporates herein by reference paragraphs 1-17 of Plaintiff's complaint as if fully set forth herein.

34. By the enactment of Preston City Ordinance, Section 16.28.030 B, the City of Preston granted certain rights establishing reimbursement for "offsite" improvements made by the Plaintiff. Under *Idaho Code* §10-1201, et. seq., there exists a justiciable controversy over the interpretation, rights, and effect of the municipal ordinance in question and the Plaintiff seeks to obtain a declaration of its rights and the responsibilities of the Defendant under said ordinance.

WHEREFORE, Plaintiff prays for a judgment against the Defendant as follows:

1. For the sum of $10,603.60 together with interest thereon at the pre-judgment rate from the date water connection(s) were made by intervening property owners to the water line installed by the Plaintiff on 8th East in Preston, Idaho;

2. For a Writ of Mandamus ordering the City of Preston to pay over to the Plaintiff, the sum of $10,603.60 together with interest thereon as aforesaid from such water connection fees collected in the past or which may be collected in the future pursuant to Preston City Ordinance §16.28.030 B, and

3. For a declaratory judgment defining the rights and responsibilities of the Plaintiff and Defendant under Preston City Ordinance Section 16.28.030 B and declaring that said ordinance is applicable to the offsite improvements made by the Plaintiff and providing for reimbursement of the Plaintiff's costs and expenses for such improvements.

4. For Beckstead's reasonable attorneys fees and costs incurred in this action, and

5. For such other and further relief as the Court finds equitable in the premises.

DATED this 8th day of December, 2006.

STEVEN R. FULLER
Attorney for Plaintiff

VERIFICATION

STATE OF IDAHO)
) ss.
County of Franklin)

SCOTT BECKSTEAD, being first duly sworn on oath, deposes and says:

That he is a principal owner of Scott Beckstead Real Estate Company, the Plaintiff, in the above-entitled action; that he has read the foregoing Complaint and knows the contents thereof; that the same is true of his own knowledge except as to matters stated therein on his information and belief and as to those matters he believes them to be true.

SCOTT BECKSTEAD

SUBSCRIBED AND SWORN to before me this 8th day of December, 2006.

STEVEN R. FULLER
NOTARY PUBLIC
STATE OF IDAHO

NOTARY PUBLIC for State of Idaho
Residing at: Preston, ID
Comm. Exp.: 1-21-11

EXHIBIT "A"

Farm Lands and Ranches
Residential Properties

SCOTT
BECKSTEAD
REAL ESTATE CO.

Income Properties
Business Opportunities

32 WEST ONEIDA - PRESTON, IDAHO 83263
PHONE (208) 852-3199

October 22, 2004

Mayor Neal Larson
City of Preston
70 West Oneida
Preston, Idaho 83263

Dear Mayor Larson,

Under the Preston Subdivision Ordinance Section 16.28.030 paragraph B, a subdivider is entitled to reimbursement for costs associated with "off site" improvements required by the city in the process of subdivision approval. One such "off site" improvement was a water line on 800 East that was required of me to install for approval of the Creamery Hollow Estates Subdivision. I understand that several water connections have been made to that line.

I would like to arrange a time that we could meet to discuss the process of such reimbursement. Also, if there is any information that you may need from me showing actual costs of installation of that line, please let me know.

I can be reached at 852-3199 which is the office number or on my cell phone which is 339-1512. I would be happy to meet you at any time.

Sincerely,

Scott L. Beckstead

FILED

07 JAN 10 AM 11:46

FRANKLIN COUNTY CLERK

L Hampton
DEPUTY

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

* * * * * *

SCOTT BECKSTEAD REAL ESTATE COMPANY, an Idaho Corporation, Plaintiff(s), vs CITY OF PRESTON, a Municipal Corporation, Defendant(s).	Case No. CV-2006-390 **ORDER FOR STATUS AND SCHEDULING CONFERENCE** **(IRCP RULE 16(b)**

It appearing that the above-entitled matter is at issue or is ready for further proceedings,

IT IS HEREBY ORDERED that a SCHEDULING CONFERENCE is hereby set in this matter **THURSDAY, January 25, 2007 at 1:45 p.m.** before the undersigned District Judge.

Counsel shall be authorized and prepared to discuss the following matters:

(1). Service upon non-served parties.

(2). Status of the case.

(3). Amendments to the pleadings.

(4). Pending or anticipated pre-trial motions.

(5). Status of discovery.

(6). Time required for trial preparations.

(7). Time required for trial.

(8). Cut-off dates for discovery and pre-trial motions.

(9). Settlement.

(10). Other matters conductive to determination of the action.

A TELEPHONE CONFERENCE CALL TO 208-852-0877 MAY BE HELD UPON REQUEST OF COUNSEL. SHOULD THIS BE THE CHOICE OF COUNSEL, A NOTICE SHOULD BE SENT TO THE COURT STATING WHO WILL BE INITIATING THE CALL. SUCH CONFERENCES CALLS SHOULD BE PLACED AT THE TIME AND ON THE DATE HEREIN SET. IT IS THE SPECIFIC REQUEST OF THE COURT THAT LOCAL COUNSEL APPEAR IN PERSON IF POSSIBLE.

DATED: January 10, 2007

DON L. HARDING
District Judge

CERTIFICATE OF MAILING/SERVICE

I hereby certify that on January 10, 2007, I mailed/served/faxed a true copy of the foregoing document on the attorney(s)/person(s) listed below by mail with correct postage thereon or causing the same to be hand delivered.

Attorney(s)/Person(s):	Method of Service:
Steven R. Fuller Attorney for Plaintiff	Faxed to: 852-2683
Clyde G. Nelson Attorney for Defendant	Faxed to: 547-2136

V. ELLIOTT LARSEN, Clerk

BY: Linda Hampton
Linda Hampton, Deputy

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

* * * * * *

SCOTT BECKSTEAD REAL ESTATE COMPANY, an Idaho Corporation Plaintiff(s), vs CITY OF PRESTON, a Municipal Corporation Defendant(s).	Case No. CV-2006-390 **ORDER FOR TRIAL, PRETRIAL SCHEDULE, AND PRETRIAL CONFERENCE**

IT IS HEREBY ORDERED:

** **TRIAL SCHEDULE** **

This cause is set for trial schedule as follows:

TRIAL:

DATE: **July 30-31, 2007** TIME: **9:30 a.m.**
PLACE: **Franklin County Courthouse**
SETTING POSITION: 1st Setting
ESTIMATED NUMBER OF DAYS: **2 days**

PRETRIAL:

DATE: **July 26, 2007** TIME: **1:30 p.m.**
PLACE: **Franklin County Courthouse**

DATED this 26th day of January, 2007.

Don L. Harding
DON L. HARDING
District Judge

* * APPENDIX A TO TRIAL ORDER * *

1. **MULTIPLE SETTINGS:**
In the event of multiple settings for the same date and time, it is the responsibility of counsel to inform themselves of their position upon the trial calendar. In the event a case cannot be tried on the date indicated, every effort will be made to reset at the earliest date available to court and the parties.

2. **SCHEDULING CONFLICTS:**
Requested continuance of trial setting because of pre-existing scheduling conflict shall be by written motion, state specifically the details of the conflict, and be filed within 14 days hereof.
Requests and/or stipulations for continuances for other than pre-existing conflicts must be in writing, state the specific reason therefore, be approved by the client, propose mutually agreeable times for rescheduling, and are subject to approval by the court.

3. **SETTLEMENT:**
In the event of settlement of this cause prior to trial, **NOTICE SHALL BE GIVEN TO THE JUDGE AND TO THE CLERK OF THE COURT FORTHWITH.** Expenses of the jury incurred because lack of reasonable notice will be assessed to the responsible party or parties.

* * PRE-TRIAL SCHEDULE * *

The pre-trial schedule for this cause shall be as follows:

1. **12 WEEKS BEFORE TRIAL - DISCLOSURE OF WITNESSES:**
Each party shall disclose in writing to all other parties a complete list of all witnesses, expert and lay, which that party intends to call at trial, together with a summary of the testimony of each.

2. **12 WEEKS BEFORE TRIAL - DISCLOSURE OF EXHIBITS:**
Each party shall disclose, in writing, to all other parties, and the court, a complete list of all exhibits, with a summary of the points to be proven, with a copy attached, which that party intends to use at trial.

3. **10 WEEKS BEFORE TRIAL - DISCOVERY COMPLETION:**
All discovery shall be completed. Discovery requests shall have been served sufficiently in advance of this date to require responses to such requests to be filed by this date. Motions for compulsion, sanctions and/or extensions will be filed in advance of this date.

4. **60 DAYS BEFORE TRIAL - MOTIONS FOR SUMMARY JUDGMENT:**
I. R. C. P. rule 56(b) shall control the filing of Motions for Summary Judgment and briefing schedule.

5. **6 WEEKS BEFORE TRIAL - MOTION DEADLINE:**
Except for motions for summary judgment, as set out above, and motions directly related to trial procedure, no motions shall be filed after this date. In addition to other requirements of the Rules, or of Orders of this Court, if any, all motions filed with this Court must be supported by a memorandum of position and authorities. Adverse parties shall oppose in the same manner.

6. **6 WEEKS BEFORE TRIAL - PRE-TRIAL CONFERENCE OF PARTIES:**
Counsel, and any unrepresented party, **shall hold a pre-trial conference** in an effort to resolve the action or to prepare a definitive pre-trial order and plan for trial. Each party shall be prepared to fully discuss each issue and defense presented by the case. The parties shall fully consider the requirements of I.R.C.P. rule 16. This conference **will be held** at the office of the plaintiff's counsel unless otherwise agreed. **Plaintiff's counsel** shall take the lead in organizing and presenting discussion.
Exhibits shall be pre-marked (numerically for plaintiff and alphabetically for defendant. **An index of all exhibits** shall be prepared showing number/letter, offering party, brief description, and whether offered without objection, or if not, the legal grounds for objection.

7. **4 WEEKS BEFORE TRIAL - PRE-TRIAL REPORT AND PROPOSED ORDER:**
The parties shall file a report of their pre-trial conference, including any stipulations of the parties, and a proposed order, substantially covering those matters contemplated by I.R.C.P. rule 16(e)(6)(A) through (K). The report shall include the index of pre-marked exhibits. **Plaintiff's counsel** shall take the lead in drafting the report and proposed order. Any party disagreeing with the content shall submit a separate report identifying the area(s) of disagreement with explanation of differences.

8. **2 WEEKS BEFORE TRIAL - BRIEFS - EXHIBIT COPIES:**
Pre-trial **POINTS AND AUTHORITIES** on all substantive, procedural or evidentiary issues anticipated shall be filed.
Each party shall furnish the court with a copy of each exhibit capable of being copied, in a binder, and tabbed for reference. A tabbed insert sheet, summarizing any exhibit not capable of being copied, shall be included.

9. **MEDIATION**-Plaintiffs shall set up a mediator within thirty (30) days and have mediation held within one hundred eighty (180) days.

Pursuant to Rule 16, I.R.C.P, a formal Pre-trial Conference shall be held on

**** JURY TRIAL ****

10. **14 DAYS BEFORE JURY TRIAL - INSTRUCTIONS AND VERDICT FORMS**
Each party **shall** file requested JURY INSTRUCTIONS and PROPOSED VERDICT FORMS. **LATE FILING SEVERELY INTERFERES WITH THE ABILITY OF THE COURT TO PREPARE FOR TRIAL.**

IRCP Rules 51(a)(1) and 51(a)(2) will be followed. IDJI instructions shall be used when appropriate and any modification will be specifically identified.
The set with cited authority and the "clean" set will be served upon the clerk of the court. The "clean" set will be used for submission to the jury. (** Rule 5 (d)(3) will be followed for filing copies directly with the court.)

**** BENCH TRIAL ****

11. **10 DAYS BEFORE BENCH TRIAL - PROPOSED FINDINGS AND CONCLUSIONS**

Unless Findings and Conclusions are waived by mutual stipulation of the parties, proposed **FINDINGS OF FACT AND CONCLUSIONS OF LAW** will be filed by each party. **The court will not proceed to trial without them. Sanctions will be imposed for delay.**

Proposed findings shall be concise and shall recite ultimate rather than mere evidentiary facts. They will serve not only as suggested findings of fact but also a convenient recitation of contentions of the respective parties to be before the court as it hears and considers the evidence.

Proposed conclusions of law should be similarly concise and reflect those that can be drawn reasonably from the proposed findings of fact, and that would support the judgment or decisions sought. Citation of authority should not be included but shall be submitted separately as Points and Authorities.

EARLIER CUT-OFF DATES MAY BE STIPULATED BY THE PARTIES. PROPOSED EXTENSIONS OF DATES SHALL BE SUBJECT TO APPROVAL BY THE COURT.

DELAY OF TRIAL CAUSED BY THE FAILURE OF A PARTY TO COMPLY WITH THIS PRE-TRIAL SCHEDULE WILL RESULT IN SANCTIONS, INCLUDING,

AMONG OTHER THINGS, CONTINUANCE, DISMISSAL, STRIKING, EXCLUSION OF WITNESS AND EVIDENCE, AND FINANCIAL PENALTIES.

CERTIFICATE OF MAILING/SERVICE

I hereby certify that on the day of , I mailed/served a true copy of the foregoing document on the attorney(s)/person(s) listed below by mail with correct postage thereon or causing the same to be hand delivered.

Attorney(s)/Person(s):	Method of Service:
Clyde Nelson	Faxed
Steve Fuller	~~Faxed~~ Hand Delivered

MJR

Linda Hampton, Deputy Clerk

CLYDE G. NELSON
Attorney at Law
172 South Main Street
P.O. Box 797
Soda Springs, ID 83276
Telephone: (208) 547-2135
Facsimile: (208) 547-2136
Idaho State Bar No. 1197

Attorney for Defendant

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

SCOTT BECKSTEAD REAL ESTATE, COMPANY Plaintiff, vs. CITY OF PRESTON, Defendant.	CASE NO. CV-2006-390 **ANSWER TO FIRST AMENDED COMPLAINT** Category: I-1-b Fee: $14.00

COMES NOW Clyde G. Nelson, Attorney for Defendant, City of Preston, and makes answer to Plaintiff's First Amended Complaint as follows:

FIRST DEFENSE

There was no agreement between the Plaintiff and Defendant for reimbursement of Plaintiff's construction of said waterline other than an upgrade from a 6-inch to a 12-inch line for which the Defendant reimbursed the Plaintiff the sum of $7,461.00. No other agreement existed between Plaintiff and Defendant for reimbursement of Plaintiff's expense in installing said waterline.

SECOND DEFENSE

§16.28.030 B is repealed pursuant to §8 and §12 of Ordinance 461, dated August 3, 1981, and Ordinance No. 2004-7 dated December 13, 2004. Copies of said Ordinances are attached hereto

and made a part of this Answer as Exhibits "A" and "B" respectively.

THIRD DEFENSE

Plaintiff submitted a letter requesting reimbursement to the Defendant dated October 22, 2004, attached to Plaintiff's Complaint as Exhibit "A" and to this Answer as Exhibit "C", which Plaintiff has designated a claim pursuant to §50-219 and §6-906, Idaho Code. Said letter, if the same constitutes a claim, fails to meet the requirements of §6-907, Idaho Code, in that said alleged claim did not accurately describe the conduct and circumstances from which the claim arose, describe the damages or amount owing to the Plaintiff, state the time and place that the damages or costs incurred by the Plaintiff did occur, the names of persons involved, and did not set forth the amount which the Plaintiff alleged was owing him. Thus, said claim is barred by Title 6, Chapter 9, Idaho Code.

FOURTH DEFENSE

Plaintiff's letter of October 22, 2004, (Exhibit "C" hereto) if the same were to constitute a valid claim, was not timely filed pursuant to §50-219 and §6-906, Idaho Code, in that the same was not filed within 180 days after completion of the project and at which time the Plaintiff knew the actual cost of his construction and the alleged amount for which the city would allegedly be liable and is barred by Title 6, Chapter 9, Idaho Code.

FIFTH DEFENSE

The Plaintiff was aware of the cost of the waterline improvements in October, 2003. Plaintiff was required to have commenced an action for recovery of said sum within two years after said date. Plaintiff's action is barred pursuant to §6-911, Idaho Code.

SIXTH DEFENSE

The Plaintiff submitted a Notice of Claim to the Defendant dated July 31, 2006 which is attached to Plaintiff's complaint as Exhibit "D". The Notice of Claim was not submitted within 180 days from the day the claim arose or reasonably should have been discovered as required by §6-906 and 50-219, Idaho Code. As such, the claim is barred pursuant to §6-908, Idaho Code, and this action is barred pursuant to §6-911, Idaho Code.

SEVENTH DEFENSE

§16.28.030 B, Preston Municipal Code, requires a subdivider to have first paid the costs of any installation of facilities to the city, requires that costs of construction of the facilities be determined by competitive bidding, requires that an engineer verify the costs of said project, and requires an agreement between the City and the Subdivider. The Plaintiff failed to comply with the provisions of said Section in that he did not pay the cost of such facilities to the city, did not request or require that the same be determined by competitive bids, did not submit a verified engineering report substantiating the costs, or enter into an agreement with the City prior to installing said line. Therefore, the Plaintiff is barred from recovery pursuant to said Code Section.

EIGHTH DEFENSE

The Defendant denied Plaintiff's request for reimbursement of October 22, 2004, (Exhibit "C" hereto) by letter from Defendant's attorney dated November 16, 2004, a copy of which is attached hereto as Exhibit "D". Nevertheless, the Plaintiff failed to file a Notice of Claim until July 31, 2006. (Exhibit "D" to Plaintiff's Complaint) A reasonable and prudent person would have knowledge of the alleged wrongful act, i.e., the city's denial of any agreement between the Defendant and Plaintiff, and the rejection of Plaintiff's request for reimbursement. Therefore, the 180 day notice period required pursuant to §6-906, and §50-219, Idaho Code, commenced on November 16, 2004, which Notice of Claim the Plaintiff failed to timely submit, and Plaintiff's claim in barred pursuant to Title 6, Chapter 9, Idaho Code.

NINTH DEFENSE

Plaintiff has a plain, speedy and adequate remedy in the ordinary course of law for determination of his claim and collection of any sums allegedly owing him together with the right to appeal any verdict of this court. Therefore, a writ of mandate is not available to Plaintiff, and said request should be denied.

TENTH DEFENSE

Monies collected for connections to waterlines within the city are for reimbursement to the city of the costs of labor, equipment, and materials incurred by the Defendant used in the connection. The city realizes no profit from its connections, and Plaintiff's claim for unjust enrichment should be denied.

ELEVENTH DEFENSE

The Plaintiff has received payment for the costs of his improvements through sales and purchases of lots within Creamery Hollow Subdivision. If the Defendant were required to reimburse Plaintiff, the Plaintiff would be unjustly enriched at the expense of Defendant.

TWELFTH DEFENSE

The Plaintiff Scott Beckstead Real Estate Company is not the real party in interest, and said action should be dismissed.

THIRTEENTH DEFENSE

Plaintiff's complaint fails to state a claim upon which relief may be granted, and the same should be dismissed.

FOURTEENTH DEFENSE

Defendant denies each and every allegation of Plaintiff's complaint unless hereinafter specifically admitted.

ANSWER TO COMPLAINT

1. Defendant admits Paragraphs 1 and 2 of Plaintiff's Complaint.

2. In response to Paragraphs 3 and 4, Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments contained therein.

3. Defendant admits Paragraphs 5 and 6 of Plaintiff's Complaint.

4. In response to Paragraph 7, Defendant admits that the City of Preston required the Plaintiff to install waterline to connect his subdivision to the city water mains. The Defendant denies that the same constituted 1,800 feet, or that it was 10-inch line, and affirmatively alleges that the line was 12-inch, was 1,650 feet long and the Defendant reimbursed Plaintiff for the upgrade from 6-inch to 12-inch.

5. In response to Paragraph 8, the Defendant admits that the waterline was completed by Plaintiff in October of 2003.

6. In response to Paragraph 9, Defendant admits that the Plaintiff wanted reimbursement for the costs of the waterline. The Defendant admits that Darrell Wilburn did discuss reimbursement of the waterline with him, denies that the City Engineer advised the Plaintiff that this was "the type of situation for which the Ordinance was written", and denies that the City Engineer suggested he request reimbursement from the

city. The Defendant does affirmatively allege that the Plaintiff did discuss reimbursement for the waterline with the City Engineer, and that the Plaintiff was advised to discuss it with the City Clerk.

7. In response to Paragraph 10, Defendant admits that the Plaintiff submitted a letter requesting reimbursement from the city for said waterline improvements, denies that the same constitutes a claim pursuant to Title 6, Chapter 9, Idaho Code, or pursuant to §50-219, Idaho Code, and affirmatively alleges that said request for reimbursement was denied by the Defendant pursuant to letter from Defendant's attorney dated November 16, 2004. (Exhibit "D" hereto)

8. In response to Paragraph 11, the Defendant admits that it submitted a letter of November 16, 2004, (Exhibit "B" of Plaintiff's Complaint and Exhibit "D" hereto) but denies that Plaintiff's letter constituted a claim as required by Title 6, Chapter 9, Idaho Code.

9. In response to Paragraph 12, Defendant admits to receipt of the letter of April 11, 2006, attached to Plaintiff's Complaint as Exhibit "C". The Defendant further affirmatively alleges that the Defendant did respond to said letter by letter dated May 24, 2004 wherein the Defendant confirmed its prior denial of Plaintiff's request for reimbursement. A copy of said letter is attached as Exhibit "E".

10. In response to Paragraph 13, Defendant admits the same.

11. In response to Paragraphs 14, 15, 16, and 17, Defendant denies the same.

12. In response to Paragraphs 18, 20, 23, 27 and 33, Defendant adopts its responses to Paragraphs 1-17 of Plaintiff's Complaint as if more fully set forth herein.

13. Defendant denies Paragraphs 19, 21, 22, 24, 25, and 26 and affirmatively alleges that the Plaintiff created a subdivision known as Creamery Hollow Subdivision, which contains 22 lots, and the waterline constructed by Plaintiff was necessary for the construction of said subdivision and benefitted the Plaintiff. The Defendant further asserts that the hook up fees charged by the Defendant to other persons who connect to said waterline are for labor, materials, and equipment used by the city in making said connections and the same constitute reimbursement to the city for its costs.

14. In response to Paragraph 28, Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments, and affirmatively alleges that the Defendant was aware of water connections being made to the waterline as early as October, 2004 as evidenced by his letter to the Defendant dated October 22, 2004 attached to Plaintiff's Complaint as Exhibit "A" and this Answer as Exhibit "C".

15. In response to Paragraph 29, Defendant admits that Plaintiff submitted a Notice of Claim dated July 31, 2006 attached to Plaintiff's Complaint as Exhibit "D".

16. In response to Paragraph 30, Defendant admits that 90 days lapsed between the Notice of Claim of July 31, 2006, and the date that the Complaint was filed. Said claim was denied by Defendants failure to respond pursuant to §6-909, Idaho Code.

17. In response to Paragraph 31, Defendant admits that connections have been made to said waterline since the construction of the same by the Plaintiff.

18. Defendant denies Paragraphs 32 and 34.

WHEREFORE, DEFENDANT PRAYS FOR JUDGMENT AS FOLLOWS:

1. That Plaintiff's claim be dismissed and Plaintiff take nothing by reason thereof.

2. That Defendant recover from Plaintiff its attorney fees and costs incurred in this action pursuant to §12-117, §12-120 and §12-121, Idaho Code.

3. For such other and further relief as the court finds just and equitable.

Dated this 28 day of February, 2007.

CLYDE G. NELSON

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served by hand delivery on this 28 day of February, 2007.

Steven R. Fuller
Attorney at Law
24 North State
Preston, ID 83263
Facsimile: (208) 852-2683

[ ] U.S. Mail
[ ] Facsimile
[x] Hand Delivered

Clyde G. Nelson

ORDINANCE NO. 461

AN ORDINANOE OF THE CITY OF PRESTON, IDAHO, PERTAINING TO THE CONSTRUCTION OF SEWER OR WATER LINES WITHIN THE CITY BY PROPERTY OWNERS AT THEIR OWN EXPENSE; REQUIRING PROPERTY OWNERS WHO LATER CONNECT TO SAID LINES TO PAY A PROPORTIONATE COST OF SAID LINES; PROHIBITING CONNECTION TO SAID LINES WITHOUT PAYMENT OF SAID COSTS; *ESTABLISHING A PROCEDURE FOR VERIFYING COSTS OF CONSTRUCTION,* APPORTIONING THE COSTS OF CONSTRUCTION AND FILING A CERTIFIED STATEMENT OF COSTS AND PAYMENTS OF COSTS; PROVIDING FOR COLLECTION OF FUNDS AND DISTRIBUTION THEREOF AND PLACING A TIME LIMIT THEREON; PROVIDING THAT THE SAME SHALL NOT APPLY TO SUBDIVIDERS; PROVIDING FOR A PENALTY FOR VIOLATION OF ORDINANCE AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, there are times when residents of the City of Preston, Idaho, desire to connect to the municipal water or sewer system and make application therefore, without the formation of a local improvement district for construction of the necessary water or sewer line which will provide service to the applicants' property as well as to other property belonging to residents of the City and for which the applicants desire to pay in full for said line or lines at the time of construction; and

WHEREAS, in such instances there are some residents who own property for which service will be provided by said line or lines and who do not wish to join in the construction of said lines or to pay their proportionate cost thereof; and

WHEREAS, the public health, safety, and welfare of the residents of the City require the City to encourage the construction and development of such water and sewer lines within the corporate limits of the City;

NOW THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF PRESTON, IDAHO, AS FOLLOWS:

Section 1. Whenever any water or sewer line is to be constructed by a property owner or owners within a certain area of the City which encompasses a greater area than the property owner-applicants' property, and which is connected to the municipal system, and which is fully paid for by the property owner at the time of construction, the City may require any person or property owner, thereafter desiring to connect to said line or lines to pay to the City Clerk of the City of Preston, Idaho a sum of money equal to the proportionate cost of construction of said line or lines which such person or property owner

would have paid had such person or property owner participated in the cost of the initial construction.

Section 2. No permit to connect to said line or lines shall be granted by the City to any person desiring to connect to the same, and no person shall connect to said line prior to payment to the City Clerk of that person's proportionate share of the cost of construction of said line.

Section 3. On completion of said line by the property owner or person constructing the same, said person shall file with the City Clerk a verified statement of the total cost of construction of said line. The City shall have the right to request such documentation as may be necessary to verify the cost alleged and may adjust these costs when, in the City Coucil's determination, the same are excessive.

Section 4. (a) Upon receipt of said verified statement the City Clerk or her designee shall compute the amount of said costs of construction attributable to properties which can be served by said water or sewer lines, when said property abutts, adjoins or is adjacent thereto, or said properties are benefited by such improvements, and such assessments shall be computed according to the front foot method, a square foot method, or a combination thereof, or in proportion to the benefits derived to such property by the improvements.

(b) After preparation of said computations the City Clerk or her designee shall prepare a certified statement setting forth the cost of construction attributable and assessed against each piece of property benefiting from said construction whose owner did not join in the payment in the initial cost of construction, and the City Clerk shall cause the same to be filed in the City records and recorded in the office of the County Recorder of Franklin County, Idaho.

Section 5. Any person or property owner who did not participate and share in the cost of construction who desires to connect to said line or lines shall, at the time of making said application to the City, pay to the City Clerk the amount computed by the City Clerk or her designee as the amount assessed against the property for the proportionate cost of construction in addition to any other fees for connection so assessed by the City. Upon payment in full of said sum

the City Clerk shall cause a permit for connection to be issued and shall file in the Office of the County Recorder of Franklin County, Idaho, a certified statement showing payment of said sum assessed against the property for construction.

Section 6. The City Clerk shall deposit those funds obtained from payment of the proportionate share of construction costs into a trust fund established for that purpose for the benefit of the original contributors or their successors in interest. As monies are paid into the fund, the City Clerk shall make distribution of the same to the person or persons originally paying for the cost of construction in the amounts that such person or persons are entitled. If the person owning property who originally paid for the cost of construction shall have transferred his interest therein to another, the City Clerk shall pay said sum to the owner of record at the time payment is made. If said property has been transferred to a third party pursuant to a contract of sale, the City Clerk shall make payment of said sum to the purchaser only if said contract authorizes the same and is filed in the Office of the City Clerk prior to said application for permit to connect.

Section 7. All water or sewer lines constructed under this ordinance shall be constructed only with the approval of the City Council, and said lines shall be constructed in accordance with all State of Idaho and City specifications and standards and shall be constructed under the authority and supervision of the City. All lines so constructed, and their appurtenances thereto, shall become the property of the City upon completion and acceptance by the City. Prior to said construction the applicant shall submit detailed plans and specifications for the proposed water or sewer lines to the City Council for approval.

Section 8. This ordinance shall not apply to subdividers of property within the City, and a subdivider shall construct all water and sewer lines at his own cost and expense in accordance with the subdivision ordinance of the City as well as any other applicable ordinances or regulations of the City.

Section 9. After ten years from date of filing with the City Clerk of the verified statement of the initial person constructing said water or sewer line the City, its elected officials, officers, agents, and employees, shall be under no further obligation to transmit said money received from subsequent connectors to said line to the original persons constructing said line or the successors in interest, and no charges, other than connection fees normally assessed by the City shall be charged by the City against subsequent connectors to said lines after said time period has expired.

Section 10. Any person or persons who shall violate any provision of this ordinance shall be guilty of a misdemeanor, and shall be punished by imprisonment in the County Jail for a period not to exceed six months or a fine not to exceed $300.00 or by both such fine and imprisonment.

Section 11. If any section, paragraph, sentence, clause or phrase of this ordinance be declared unconstitutional or invalid for any reason, the remaining provisions of said ordinance shall not be affected thereby but shall remain in full force and effect.

Section 12. All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed, and this ordinance shall be in full force and effect from and after its passage and publication according to law.

PASSED AND APPROVED this 3rd day of August, 1981.

CITY OF PRESTON

By Wayne A. Beer
Mayor

Attest:

City Clerk

ORDINANCE NO. 2004-7

AN ORDINANCE OF THE CITY OF PRESTON, IDAHO, REPEALING SECTION 16.28.030(B) OF THE PRESTON MUNICIPAL CODE RELATING TO REIMBURSEMENT TO SUBDIVIDERS FOR IMPROVEMENTS MADE UNDER THE SUBDIVISION ORDINANCE; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT WITH THIS ORDINANCE; WAIVING THE REQUIREMENT THAT THIS ORDINANCE BE READ ON THREE (3) SEPARATE OCCASIONS; AND ESTABLISHING AN EFFECTIVE DATE OF THIS ORDINANCE.

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF PRESTON, IDAHO, AS FOLLOWS:

Section 1: Section 16.28.030(B) of the Preston Municipal Code is hereby repealed.

Section 2: All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed.

Section 3: The rule requiring that this ordinance be read on three (3) separate occasions is hereby waived.

Section 4: This ordinance shall be in full force and effect from and after its passage, approval, and publication according to law.

PASSED AND APPROVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF PRESTON, IDAHO, this 13th day of December, 2004.

CITY OF PRESTON, IDAHO

NEAL LARSON, Mayor

ATTEST:

JERRY C. LARSEN, City Clerk

Exhibit "B"

Farm Lands and Ranches
Residential Properties

Income Properties
Business Opportunities

SCOTT
BECKSTEAD
REAL ESTATE CO.

32 WEST ONEIDA - PRESTON, IDAHO 83263
PHONE (208) 852-3199

October 22, 2004

Mayor Neal Larson
City of Preston
70 West Oneida
Preston, Idaho 83263

Dear Mayor Larson,

Under the Preston Subdivision Ordinance Section 16.28.030 paragraph B, a subdivider is entitled to reimbursement for costs associated with "off site" improvements required by the city in the process of subdivision approval. One such "off site" improvement was a water line on 800 East that was required of me to install for approval of the Creamery Hollow Estates Subdivision. I understand that several water connections have been made to that line.

I would like to arrange a time that we could meet to discuss the process of such reimbursement. Also, if there is any information that you may need from me showing actual costs of installation of that line, please let me know.

I can be reached at 852-3199 which is the office number or on my cell phone which is 339-1512. I would be happy to meet you at any time.

Sincerely,

Scott L. Beckstead

Exhibit "C"

CITY OF PRESTON

CLYDE G. NELSON
CITY ATTORNEY
172 S. MAIN
P. O. BOX 797
SODA SPRINGS, IDAHO 83276

TELEPHONE
(208) 547-2135

FACSIMILE
(208) 547-2136

November 16, 2004

Scott Beckstead
Beckstead Real Estate Co.
32 West Oneida
Preston, ID 83263

Re: Subdivision Ordinance / Creamery Hollow Subdivision

Dear Scott:

Mayor Larson has asked that I reply to your letter of October 22, 2004, in regard to your request to be reimbursed for "costs associated with 'off site' improvements required by the city in the process of subdivision approval." You are suggesting that you are entitled to reimbursement for improvements on a waterline on 800 East Street.

The section to which you refer is §16.28.030(B). That section reads as follows:

"16.28.030 B. Whenever any intervening property ("off-site") is benefitted by the installation of any of the required facilities, the subdivider may pay the cost of such facilities to the city, such costs to be determined by competitive bids solicited by the city together with verified engineering costs required therefor. The city shall thereafter enter a deferred credit in its books and records and shall charge the benefited intervening property owners the fee rates for sewer and water connections in effect at the time such connections are made. Such fees shall then be returned to the subdivider to reimburse the cost of the installation of the facilities; such agreement for reimbursement shall extend for a maximum period of five (5) years from initial date of agreement after which time no further reimbursement shall be made to the subdivider. The city may also elect to reimburse the subdivider for such "off-site" facilities in full or in part after the subdivider has furnished the city with acceptable evidence that an agreed number of housing units are occupied. No interest shall accrue or become payable on such reimbursement. Engineering drawings showing benefited property shall be prepared by the city engineer and copies forwarded to the sewer, water and streets department of the city."

This section does not require the city to reimburse you and repeatedly refers to an agreement entered into between the parties which would allow for reimbursement to the subdivider if the subdivider had paid the City for the construction improvements. You did not.

CITY OF PRESTON

CLYDE G. NELSON
CITY ATTORNEY
172 SOUTH MAIN STREET
P. O. BOX 797
SODA SPRINGS, IDAHO 83276

TELEPHONE
(208) 547-2135

FACSIMILE
(208) 547-2136

May 24, 2006

Steven R. Fuller
Attorney at Law
24 North State Street
P.O. Box 191
Preston, ID 83263

Re: Scott Beckstead / Requested Reimbursement

Dear Steve:

Thank you for your letters of May 19, 2006, and April 11, 2006. I did discuss your first letter with the City Council at the last meeting which I attended on May 8, 2006. The City Council reviewed your letter, and my prior letter to Scott Beckstead dated November 16, 2004. The City Council chose not to reconsider its prior response as contained in my letter.

In addition thereto, I do not believe that Scott has complied with §50-219 and §6-906, Idaho Code. I direct your attention to the case of Magnuson Properties v. Coeur D' Alene 138 Idaho 166.

If you have any questions, please contact me.

Sincerely,

CLYDE G. NELSON

CGN:sh
cc: City Council

CITY OF PRESTON

CLYDE G. NELSON
CITY ATTORNEY
172 S. MAIN
P. O. BOX 797
SODA SPRINGS, IDAHO 83276

TELEPHONE
(208) 547-2135

FACSIMILE
(208) 547-2136

November 16, 2004

Scott Beckstead
Beckstead Real Estate Co.
32 West Oneida
Preston, ID 83263

Re: Subdivision Ordinance / Creamery Hollow Subdivision

Dear Scott:

Mayor Larson has asked that I reply to your letter of October 22, 2004, in regard to your request to be reimbursed for "costs associated with 'off site' improvements required by the city in the process of subdivision approval." You are suggesting that you are entitled to reimbursement for improvements on a waterline on 800 East Street.

The section to which you refer is §16.28.030(B). That section reads as follows:

"16.28.030 B. Whenever any intervening property ("off-site") is benefitted by the installation of any of the required facilities, the subdivider may pay the cost of such facilities to the city, such costs to be determined by competitive bids solicited by the city together with verified engineering costs required therefor. The city shall thereafter enter a deferred credit in its books and records and shall charge the benefited intervening property owners the fee rates for sewer and water connections in effect at the time such connections are made. Such fees shall then be returned to the subdivider to reimburse the cost of the installation of the facilities; such agreement for reimbursement shall extend for a maximum period of five (5) years from initial date of agreement after which time no further reimbursement shall be made to the subdivider. The city may also elect to reimburse the subdivider for such "off-site" facilities in full or in part after the subdivider has furnished the city with acceptable evidence that an agreed number of housing units are occupied. No interest shall accrue or become payable on such reimbursement. Engineering drawings showing benefited property shall be prepared by the city engineer and copies forwarded to the sewer, water and streets department of the city."

This section does not require the city to reimburse you and repeatedly refers to an agreement entered into between the parties which would allow for reimbursement to the subdivider if the subdivider had paid the City for the construction improvements. You did not.

Re: Subdivision Ordinance / Creamery Hollow Subdivision

The agreement must be approved prior to the development. In addition to the section requiring a contract prior to the construction, the cost of the construction is to be determined by "competitive bids solicited by the city together with verified engineering costs required therefor." If you had desired reimbursement for these improvements, it would have been necessary that an agreement be executed, that competitive bids be solicited pursuant to that agreement and that an engineer verify the costs required for the construction. There was no agreement, there were no competitive bids, no verified engineering study, and no payment by you to the City.

This section is similar to those requirements set forth for local improvement districts. (Chapter 17, Title 50, Idaho Code). To create a local improvement district there must first be a resolution to create the district. Included within the resolution is a requirement that the total costs and expenses of the project and percentage that will be paid by the city and the local improvement district be included. A determination must be made as to which properties will be benefitted by the improvements, and how they will be benefitted. For example, the engineer could determine that an intervening piece of property could not be developed, and only one connection would be attributed to that property. In another intervening piece of property, the engineer could determine that the property could be developed into one hundred lots. An amount would be paid to the City, but the amount paid to you as reimbursement, would be based upon the total number of lots that could be developed on the intervening properties verses the number of lots which you have developed. In addition, you only paid for a portion of the cost of the line, and any payment by the City to you would have to based upon a percentage of the total cost of the line.

I think that the reasons set forth above are quite clear as to why your request would have to be rejected. I hope this letter answers your questions as to the City's position. If you have any additional questions, please feel free to contact me.

Sincerely,

CLYDE G. NELSON

CGN:jn
cc: Mayor and City Council
Darrell Wilburn

STEVEN R. FULLER – 2995
Steven R. Fuller Law Office
24 North State
P.O. Box 191
Preston, ID 83263
Telephone: (208) 852-2680
Facsimile: (208) 852-2683

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

SCOTT BECKSTEAD REAL ESTATE COMPANY, an Idaho Corporation, and SCOTT BECKSTEAD, individually, Plaintiffs, vs. CITY OF PRESTON, a Municipal Corporation, Defendant.	CASE NO. CV-06-390 **SECOND AMENDED COMPLAINT**

COMES NOW, the Plaintiffs, Scott Beckstead Real Estate Company and Scott Beckstead, individually, and for a cause of action against the Defendant, The City of Preston, Idaho, alleges as follows:

GENERAL ALLEGATIONS

1. Scott Beckstead Real Estate Company is a corporation duly organized and existing under the laws of the State of Idaho and doing business in real estate sales and development.

2. The City of Preston is a municipal corporation located in Franklin County, Idaho and is a political subdivision of the State of Idaho.

3. Scott Beckstead is the principal owner of Scott Beckstead Real Estate Company (hereafter Scott Beckstead Real Estate Company and Scott Beckstead shall be collectively referred to as "Beckstead").

4. In July of 2002, Beckstead acquired certain real property located within the boundaries of the City of Preston for the purpose of real estate development.

5. Beckstead submitted to the City of Preston a preliminary plat for approval in December of 2002 for a subdivision to be located at approximately 600 East Oneida Street in the City of Preston. The proposed subdivision was named Creamery Hollow Estates Subdivision.

6. On July 28, 2003, the City of Preston approved the final plat of the Creamery Hollow Estates Subdivision.

7. One of the conditions imposed by the City of Preston for approval of the Creamery Hollow Estates Subdivision, required Beckstead to install 1,700 feet of twelve-inch pipe along 800 East in Preston, Idaho, a location north of Oneida Street, entirely separate from and not connected to the Creamery Hollow Estates Subdivision.

8. The twelve-inch water line was installed on 8th East in Preston by Beckstead in October of 2003.

9. In October of 2004, Beckstead learned that a water connection or connections were being sold by the City and connected to the water line which Beckstead had installed along 800 East in Preston and he spoke to the Preston City Engineer, Darrell

Willburn about reimbursement of the costs of the water line as set forth in City Ordinance §16.28.030 B. He was told by the City Engineer that this was the type of situation for which the ordinance was written and suggested that he request reimbursement from the City of Preston.

10. By letter dated October 22, 2004, Beckstead made a claim to the City of Preston for reimbursement of his "off-site" improvements as set forth in the City ordinance. A copy of said letter is attached hereto as Exhibit "A" and incorporated herein by reference.

11. By letter dated November 16, 2004, the City of Preston, through the City Attorney, denied the claim for reimbursement on the basis that no "agreement" had been approved prior to the development. (See Exhibit "B" attached hereto)

12. Beckstead contacted legal counsel to ask the City of Preston to reconsider its position which was done by letter dated April 11, 2006, a copy of which is attached hereto as Exhibit "C" and incorporated herein by reference.

13. The City of Preston declined to meet with Beckstead or his counsel but instead reaffirmed their position that they would make no reimbursement to Beckstead for the improvements he had made to the Preston City water system as required under the ordinance.

14. The applicable Preston City ordinance, §16.28.030 B reads as follows:

> **Whenever any intervening property ("off-site") is benefitted by the installation of any of the required facilities, the subdivider may pay the costs of such facilities to the city, such costs to be determined by competitive bids solicited by the city, together with verified engineering costs required therefore. The City shall thereafter enter a deferred credit in its books and records and shall charge the benefitted intervening property owners the fee rates for sewer and water connections in effect at the time such connections are made. Such**

fees shall then be returned to the subdivider to reimburse the costs of the installation of the facilities; such agreement for reimbursement shall extend for a maximum period of five years from initial date of agreement after which time no further reimbursement shall be made to the subdivider. The city may also elect to reimburse the subdivider for such "off-site" facilities in full or in part after the subdivider has furnished the City with acceptable evidence that an agreed number of housing units are occupied. No interest shall accrue or become payable on such reimbursement. Engineering drawings showing benefitted property shall be prepared by the city engineer and copies forwarded to the sewer, water and streets departments of the City. (Ord. 97-18 §§ 1, 2, 1997; Ord. 391 Ch. 4 §3, 1974).

15. Beckstead incurred $10,348.64 in out-of-pocket costs for labor and materials used in the installation of the pipeline along 8th East for which he seeks reimbursement from the City of Preston. He also provided his own labor for which a reasonable charge would be $2,805.00.

16. Each connection to the water line installed by Beckstead along 800 East in Preston is a new claim against the City of Preston pursuant to Preston City Ordinance §16.28.030 B for a period of five years.

17. Beckstead has been required to retain an attorney and, pursuant to *Idaho Code* §12-117, Beckstead should be entitled to an award of his reasonable attorneys fees and costs incurred in this action.

FIRST CAUSE OF ACTION

Statutory Claim

18. Beckstead realleges and incorporates herein by reference paragraphs 1-17 of the his general allegations as if fully set forth herein.

19. The City of Preston should be required to pay to Beckstead the sum of $13,153.64 together with interest thereon from the date water connections were made to the water line along 800 East in Preston by intervening property owners who benefitted from the installation of said water line at the pre-judgment legal rate of 12% per annum, until paid.

SECOND CAUSE OF ACTION

Writ of Mandamus

20. Beckstead realleges and incorporates herein by reference paragraphs 1-17 of the general allegations as if fully set forth herein.

21. Beckstead has no adequate remedy at law or equity sufficient to require the City of Preston to comply with its own ordinance §16.28.030 B.

22. Beckstead requests that this Court enter a Writ of Mandamus ordering the City of Preston to pay over such sums as have been or shall be collected from persons connecting to the water line installed by Beckstead along 8th East pursuant to said ordinance for a period of five years from October of 2003 up to $13,153.64, together with interest thereon at the prejudgment rate of 12% per annum until paid.

THIRD CAUSE OF ACTION

Unjust Enrichment

23. Beckstead realleges and incorporates herein by reference paragraphs 1-17 of his general allegations as if fully set forth herein.

30. More than ninety days has elapsed since the Notice of Claim was filed with the City of Preston, but no response was made by the Defendant.

31. Each connection for which reimbursement is sought was made during the five-year period stated under Preston City Ordinance, Section 16.28.030 B.

32. The City of Preston should be required to pay Beckstead the sum of $13,153.64 together with interest thereon from the date water connections were made to the water line along 800 East in Preston, Idaho, by intervening property owners who benefitted from the installation of said water line at the pre-judgement legal rate of 12% per annum, until paid.

FIFTH CAUSE OF ACTION

Request for Declaratory Judgment

33. Plaintiff realleges and incorporates herein by reference paragraphs 1-17 of Plaintiff's complaint as if fully set forth herein.

34. By the enactment of Preston City Ordinance, Section 16.28.030 B, the City of Preston granted certain rights establishing reimbursement for "off-site" improvements made by the Plaintiff. Under *Idaho Code* §10-1201, et. seq., there exists a justiciable controversy over the interpretation, rights, and effect of the municipal ordinance in question and the Plaintiff seeks to obtain a declaration of its rights and the responsibilities of the Defendant under said ordinance.

WHEREFORE, Plaintiff prays for a judgment against the Defendant as follows:

1. For the sum of $13,153.64 together with interest thereon at the pre-judgment rate of 12% per annum from the date water connection(s) were made by intervening property owners to the water line installed by the Plaintiff on 8th East in Preston, Idaho;

2. For a Writ of Mandamus ordering the City of Preston to pay over to the Plaintiff, the sum of $13,153.64 together with interest thereon as aforesaid from such water connection fees collected in the past or which may be collected in the future pursuant to Preston City Ordinance §16.28.030 B, and

3. For a Declaratory Judgment defining the rights and responsibilities of the Plaintiff and Defendant under Preston City Ordinance Section 16.28.030 B and declaring that said ordinance is applicable to the off-site improvements made by the Plaintiff and providing for reimbursement of the Plaintiff's costs and expenses for such improvements.

4. For Beckstead's reasonable attorneys fees and costs incurred in this action, and

5. For such other and further relief as the Court finds equitable in the premises.

DATED this 2nd day of May, 2007.

STEVEN R. FULLER
Attorney for Plaintiff

VERIFICATION

STATE OF IDAHO)
) ss.
County of Franklin)

SCOTT BECKSTEAD, being first duly sworn on oath, deposes and says:

That he is a principal owner of Scott Beckstead Real Estate Company, the Plaintiff, in the above-entitled action; that he has read the foregoing Complaint and knows the contents thereof; that the same is true of his own knowledge except as to matters stated therein on his information and belief and as to those matters he believes them to be true.

SCOTT BECKSTEAD

SUBSCRIBED AND SWORN to before me this 2nd day of May, 2007.

STEVEN R. FULLER
NOTARY PUBLIC
STATE OF IDAHO

NOTARY PUBLIC for State of Idaho
Residing at: Preston, ID
Comm. Exp.: 1-21-11

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing SECOND AMENDED COMPLAINT was served on the 2nd day of May, 2007.

On:	By:
	✓ MAIL, POSTAGE PRE-PAID
Clyde G. Nelson Attorney at Law P.O. Box 797 Soda Springs, ID 83276	____ HAND DELIVERY
	✓ TELEPHONE FACSIMILE

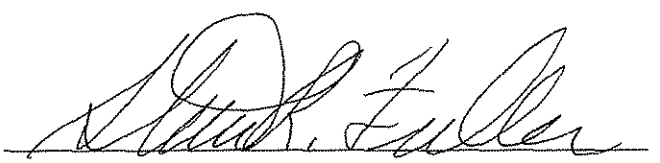


EXHIBIT "A"

Farm Lands and Ranches
Residential Properties

Income Properties
Business Opportunities

SCOTT BECKSTEAD REAL ESTATE CO.

32 WEST ONEIDA - PRESTON, IDAHO 83263
PHONE (208) 852-3199

October 22, 2004

Mayor Neal Larson
City of Preston
70 West Oneida
Preston, Idaho 83263

Dear Mayor Larson,

Under the Preston Subdivision Ordinance Section 16.28.030 paragraph B, a subdivider is entitled to reimbursement for costs associated with "off site" improvements required by the city in the process of subdivision approval. One such "off site" improvement was a water line on 800 East that was required of me to install for approval of the Creamery Hollow Estates Subdivision. I understand that several water connections have been made to that line.

I would like to arrange a time that we could meet to discuss the process of such reimbursement. Also, if there is any information that you may need from me showing actual costs of installation of that line, please let me know.

I can be reached at 852-3199 which is the office number or on my cell phone which is 339-1512. I would be happy to meet you at any time.

Sincerely,

Scott L. Beckstead

EXHIBIT "B"

CITY OF PRESTON

CLYDE G. NELSON
CITY ATTORNEY
172 S. MAIN
P. O. BOX 797
SODA SPRINGS, IDAHO 83276

TELEPHONE
(208) 547-2135

FACSIMILE
(208) 547-2136

November 16, 2004

Scott Beckstead
Beckstead Real Estate Co.
32 West Oneida
Preston, ID 83263

Re: Subdivision Ordinance / Creamery Hollow Subdivision

Dear Scott:

Mayor Larson has asked that I reply to your letter of October 22, 2004, in regard to your request to be reimbursed for "costs associated with 'off site' improvements required by the city in the process of subdivision approval." You are suggesting that you are entitled to reimbursement for improvements on a waterline on 800 East Street.

The section to which you refer is §16.28.030(B). That section reads as follows:

"16.28.030 B. Whenever any intervening property ("off-site") is benefitted by the installation of any of the required facilities, the subdivider may pay the cost of such facilities to the city, such costs to be determined by competitive bids solicited by the city together with verified engineering costs required therefor. The city shall thereafter enter a deferred credit in its books and records and shall charge the benefited intervening property owners the fee rates for sewer and water connections in effect at the time such connections are made. Such fees shall then be returned to the subdivider to reimburse the cost of the installation of the facilities; such agreement for reimbursement shall extend for a maximum period of five (5) years from initial date of agreement after which time no further reimbursement shall be made to the subdivider. The city may also elect to reimburse the subdivider for such "off-site" facilities in full or in part after the subdivider has furnished the city with acceptable evidence that an agreed number of housing units are occupied. No interest shall accrue or become payable on such reimbursement. Engineering drawings showing benefited property shall be prepared by the city engineer and copies forwarded to the sewer, water and streets department of the city."

This section does not require the city to reimburse you and repeatedly refers to an agreement entered into between the parties which would allow for reimbursement to the subdivider if the subdivider had paid the City for the construction improvements. You did not.

Re: Subdivision Ordinance / Creamery Hollow Subdivision

The agreement must be approved prior to the development. In addition to the section requiring a contract prior to the construction, the cost of the construction is to be determined by "competitive bids solicited by the city together with verified engineering costs required therefor." If you had desired reimbursement for these improvements, it would have been necessary that an agreement be executed, that competitive bids be solicited pursuant to that agreement and that an engineer verify the costs required for the construction. There was no agreement, there were no competitive bids, no verified engineering study, and no payment by you to the City.

This section is similar to those requirements set forth for local improvement districts. (Chapter 17, Title 50, Idaho Code). To create a local improvement district there must first be a resolution to create the district. Included within the resolution is a requirement that the total costs and expenses of the project and percentage that will be paid by the city and the local improvement district be included. A determination must be made as to which properties will be benefitted by the improvements, and how they will be benefitted. For example, the engineer could determine that an intervening piece of property could not be developed, and only one connection would be attributed to that property. In another intervening piece of property, the engineer could determine that the property could be developed into one hundred lots. An amount would be paid to the City, but the amount paid to you as reimbursement, would be based upon the total number of lots that could be developed on the intervening properties verses the number of lots which you have developed. In addition, you only paid for a portion of the cost of the line, and any payment by the City to you would have to based upon a percentage of the total cost of the line.

I think that the reasons set forth above are quite clear as to why your request would have to be rejected. I hope this letter answers your questions as to the City's position. If you have any additional questions, please feel free to contact me.

Sincerely,

CLYDE G. NELSON

CGN:jn
cc: Mayor and City Council
Darrell Wilburn

EXHIBIT "C"

STEVEN R. FULLER LAW OFFICE
Attorneys and Counselors at Law
24 NORTH STATE ♦ P.O. BOX 191 ♦ PRESTON, IDAHO 83263

STEVEN R. FULLER*
R. TODD GARBETT

*Also Member of Utah Bar

TELEPHONE: (208) 852-2680
FAX: (208) 852-2683

April 11, 2006

Mayor and City Council
City of Preston
70 West Oneida
Preston, ID 83263

Re: ***Scott Beckstead Real Estate Company***
Off-site Improvements Reimbursement

Dear Mayor and City Council:

Please find the following enclosed documents:

1) Preston City Ordinance 16.28.030 B;
2) Letter dated October 22, 2004 from Scott Beckstead to the City;
3) Letter dated November 16, 2004 from Clyde G. Nelson to Scott Beckstead;
4) Letter dated April 8, 2003 from Darrell Wilburn, Preston City Engineer to DEQ;
5) Memo dated December 31, 2002 from Darrell Wilburn to Scott Beckstead.

Mr. Scott Beckstead of Scott Beckstead Real Estate Company has requested that I respond to the City of Preston regarding his request of October 22, 2004 for reimbursement for "off-site" improvements required by the City in the approval of his Creamery Hollow Estates Subdivision. He asked me specifically to review Preston City Ordinance, Section 16.2.030(B). He has also asked me to review a letter sent by Preston City Attorney, Clyde Nelson, in which Mr. Beckstead's request for reimbursement is denied. Mr. Beckstead is requesting the City reconsider its position and provide for reimbursement for a water line on 800 East that was installed by Mr. Beckstead as a requirement by the City for approval of his subdivision.

I have enclosed a copy of the applicable Preston City Ordinance and although I believe it has since been repealed, there is no question it was in effect at the time Mr. Beckstead's subdivision was approved and he installed the water line at his expense.

The first sentence of the ordinance reads:

> **Whenever any intervening property ("off-site") is benefitted by the installation of any of the required facilities, the subdivider <u>may</u> pay the cost of such facilities to the City, such costs to be determined by competitive bids, solicited by the City, together with verified engineering costs required therefore.** (emphasis added)

It is clear that the purpose of the ordinance is expressed in the first sentence which allows for reimbursement to a subdivider who installs and pays for off-site improvements which will ultimately benefit other developers. The intent of the ordinance was to have other developers share in such costs rather than making one person carry the entire burden. In Mr. Nelson's reading of the ordinance, he states that it is a requirement for the subdivider to pay the costs of the facilities to the City, with such costs to be determined by competitive bid and verified engineering costs included. This is not what the ordinance says. The ordinance states the subdivider "may" be required to pay the costs of such facilities to the City, etc. The use of the word "may" makes the requirement of this sentence discretionary, not mandatory. In this case, the City did not require Mr. Beckstead to pay the City for the costs, but instead he paid for the entire costs associated with installing the water line. At no time did the City indicate to Mr. Beckstead that he must pay the cost to the City first.

The second sentence of the ordinance contains mandatory, not discretionary language, through the use of the word "shall". It states:

> **The City <u>shall</u> thereafter enter a deferred credit in its books and records and shall charge the benefitted intervening property owners the fee rates for sewer and water connections in effect at the time such connections are made.** (emphasis added)

The City, by its own ordinance, has created a rule that it must follow if a developer has installed an off-site water line that benefits intervening property owners. The City must enter a deferred credit in its books and charge the intervening property owners as outlined in this sentence. Once this is done, the ordinance continues:

> **Such fee shall then be returned to the subdivider to reimburse the costs of the installation of the facilities; such agreement for *reimbursement shall extend for a maximum period of five years from* initial date of agreement after which time no further reimbursement shall be made to the subdivider.** (emphasis added)

Again, the ordinance uses the word "shall" indicating that the fees must be returned to the subdivider to reimburse him for the costs he has incurred.

The City has taken the position that the word "agreement" in the ordinance means that some type of written document should have been drafted and entered into between the parties in order to make this ordinance effective. Mr. Beckstead was not presented with any such requirement at the time he put in the off-site water line, nor was he given any agreement in writing by the City. A written agreement was not necessary. A City does not require a written agreement with each of its residents to obey traffic ordinances or other laws and no written agreement is necessary to give effect to the plain wording and intent of this ordinance.

The primary rule governing the interpretation of an ordinance is to ascertain and determine the intent of the ordinance from the plain meaning of its words. This is a rule of law that has been established by our Courts for many years. If the clear intent of this ordinance was to reimburse those who had created off-site improvements which benefit others, then how can it be said that the installation of the off-site water line by Mr. Beckstead was not within the clear intent and purpose of this ordinance. Any ambiguity in the ordinance is to be construed in such a way as to not defeat its purpose or intent.

Since the installation of the water pipeline by Mr. Beckstead, he believes there have been at least four water connections made to the pipeline he installed at his expense. We can only assume that these developers paid their water connection fees to the City, but no reimbursement has been made to Mr. Beckstead.

Mr. Beckstead is asking the City to re-examine its position with regards to its denial of reimbursement to him. Of course, Mr. Beckstead does have recourse to the court system and possibly a further reimbursement of his attorneys fees and costs as provided in *Idaho Code* §12-117, but if we can come to a reasonable solution without litigation, it would benefit both parties. If the City agrees to discuss this matter, we ask that this matter be placed on the agenda of the next available council meeting which can be held in executive session, if the council so desires, since this matter does involve a legal dispute. Again, we ask the Mayor and City Council to look at this ordinance, not in a way of finding some

method or loop hole to escape its responsibility, but instead to look at its intent and determine whether or not reimbursement for the water line installed by Mr. Beckstead was a purpose for which this ordinance was enacted.

Sincerely,

Steven R. Fuller
Attorney at Law

srf:sh

cc: Scott Becktead Real Estate Company

EXHIBIT D

NOTICE OF CLAIM

Claimant: Scott Beckstead
Scott Beckstead Real Estate Company

To: City Clerk, Mayor and City Council
City of Preston, Idaho

1. **CONDUCT AND CIRCUMSTANCES REGARDING CLAIM:**

In October, 2003, the Claimant, Scott Beckstead acting on behalf of Scott Beckstead Real Estate Company, installed a ten-inch water line along 1800 East in Preston, Idaho, as a requirement imposed by the City of Preston for approval of a subdivision known as Creamery Hollow Estates. Under the applicable Preston City Ordinance, §16.2.030(B) in effect at the time the water line was constructed, Mr. Beckstead was entitled to reimbursement for the "off-site" improvements made which were to be paid as additional connections were made to the water line over a period of five years. It is the understanding of the Claimant that water connections have been made to the water line along 1800 East in Preston, but no reimbursement has been made to the Claimant. A previous claim was filed by Mr. Beckstead with the City of Preston on October 22, 2004. Each connection to the water line along 1800 East in Preston, Idaho, gives rise to a separate and distinct claim against the City of Preston until full reimbursement has been made. The City of Preston has failed and refused to pay the legitimate claims of the Claimant and has denied him reimbursement pursuant to the set ordinance despite the fact that water connections have been made to the water line along 1800 East.

2. **TIME AND PLACE OF DAMAGE:**

It is the understanding of the Claimant that water connections have been made and water connection fees received by the City of Preston in 2004, 2005 and 2006 which would be sufficient to pay or partially pay the Claimant for the sums he has expended pursuant to the ordinance.

3. **NAMES OF PERSONS OR ENTITIES INVOLVED:**

Scott Beckstead and Scott Beckstead Realty Company.

4. **AMOUNT OF DAMAGES:**

The amount of this claim for labor, costs and materials is the sum of $10,603.60.

RESPECTFULLY SUBMITTED this 31st day of July, 2006, by Steven R. Fuller, Attorney for Scott Beckstead and Scott Beckstead Real Estate Company, 24 North State, Preston, Idaho 83263 - Tel. No. (208) 852-2680.

STEVEN R. FULLER
Attorney for Scott Beckstead and
Scott Beckstead Real Estate Company

cc: Scott Beckstead

STEVEN R. FULLER – 2995
Steven R. Fuller Law Office
24 North State
P.O. Box 191
Preston, ID 83263
Telephone: (208) 852-2680
Facsimile: (208) 852-2683

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

SCOTT BECKSTEAD REAL ESTATE COMPANY, Plaintiff, vs. CITY OF PRESTON, Defendant.	CASE NO. CV-06-390 **ORDER GRANTING LEAVE TO AMEND COMPLAINT**

THIS MATTER having come before the Court pursuant to the Motion of the Plaintiff for leave to amend complaint, and upon good cause appearing, IT IS HEREBY ORDERED that Plaintiff be allowed to amend its complaint as set forth in the Plaintiff's Second Amended Complaint and that the Second Amended Complaint be filed and lodged as a proper pleading in this matter.

DATED this 15 day of May, 2007.

DON L. HARDING
District Judge

CLERK'S CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing ORDER GRANTING LEAVE TO AMEND COMPLAINT was served on the 15 day of May, 2007.

On:	By:
Clyde G. Nelson Attorney at Law P.O. Box 797 Soda Springs, ID 83276	✓ MAIL, POSTAGE PRE-PAID ✓ HAND DELIVERY _____ TELEPHONE FACSIMILE
Steven R. Fuller Attorney at Law P.O. Box 191 Preston, Idaho 83263	_____ MAIL, POSTAGE PRE-PAID X HAND DELIVERY _____ TELEPHONE FACSIMILE

Linda Hampton

FILED

07 MAY 17 PM 3:27

FRANKLIN COUNTY CLERK

DEPUTY

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

* * * * * *

SCOTT BECKSTEAD REAL ESTATE COMPANY, an Idaho Corporation, Plaintiff(s), vs CITY OF PRESTON, a Municipal Corporation, Defendant(s).	Case No. CV-2006-390 **MINUTE ENTRY AND ORDER**

DATE: May 15, 2007

APPEARANCES: Steven R. Fuller, Attorney for Plaintiff
Clyde G. Nelson, Attorney for Defendant – via telephone

MATTER BEFORE THE COURT: Plaintiff's Motion to Amend Complaint

PROCEEDINGS: At the outset the Court heard oral argument from respective counsel regarding said motion with Mr. Nelson's objection noted. After consideration the Court GRANTED the motion.

DATED: May 15, 2007

Don L. Harding

DON L. HARDING
District Judge

CERTIFICATE OF MAILING/SERVICE

I hereby certify that on May 16, 2007, I mailed/served/faxed a true copy of the foregoing document on the attorney(s)/person(s) listed below by mail with correct postage thereon or causing the same to be hand delivered.

Attorney(s)/Person(s):	Method of Service:
Steven R. Fuller Attorney for Plaintiff	Faxed to: 852-2683
Clyde G. Nelson Attorney for Defendant	Faxed to: 547-2136

V. ELLIOTT LARSEN, Clerk

BY: Linda Hampton
Linda Hampton, Deputy

80

CLYDE G. NELSON
Attorney at Law
172 South Main Street
P.O. Box 797
Soda Springs, ID 83276
Telephone: (208) 547-2135
Facsimile: (208) 547-2136
Idaho State Bar No. 1197

Attorney for Defendant

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

SCOTT BECKSTEAD REAL ESTATE, COMPANY, an Idaho Corporation, and Scott Beckstead, Individually Plaintiff, vs. CITY OF PRESTON, Defendant.	CASE NO. CV-2006-390 **ANSWER TO PLAINTIFF'S SECOND AMENDED COMPLAINT**

COMES NOW Clyde G. Nelson, Attorney for Defendant, City of Preston, and makes answer to Plaintiff's Second Amended Complaint as follows:

FIRST DEFENSE

There was no agreement between the Plaintiff and Defendant for reimbursement of Plaintiff's construction of said waterline other than an upgrade from a 6-inch to a 12-inch line for which the Defendant reimbursed the Plaintiff the sum of $7,461.00. No other agreement existed between Plaintiff and Defendant for reimbursement of Plaintiff's expense in installing said waterline.

SECOND DEFENSE

§16.28.030 B is repealed pursuant to §8 and §12 of Ordinance 461, dated August 3, 1981, and Ordinance No. 2004-7 dated December 13, 2004. Copies of said Ordinances are attached hereto and made a part of this Answer as Exhibits "A" and "B" respectively.

THIRD DEFENSE

Plaintiff submitted a letter requesting reimbursement to the Defendant dated October 22, 2004, attached to Plaintiff's Complaint as Exhibit "A" and to this Answer as Exhibit "C", which Plaintiff has designated a claim pursuant to §50-219 and §6-906, Idaho Code. Said letter, if the same constitutes a claim, fails to meet the requirements of §6-907, Idaho Code, in that said alleged claim did not accurately describe the conduct and circumstances from which the claim arose, describe the damages or amount owing to the Plaintiff, state the time and place that the damages or costs incurred by the Plaintiff did occur, the names of persons involved, and did not set forth the amount which the Plaintiff alleged was owing him. Thus, said claim is barred by Title 6, Chapter 9, Idaho Code.

FOURTH DEFENSE

Plaintiff's letter of October 22, 2004, (Exhibit "C" hereto) if the same were to constitute a valid claim, was not timely filed pursuant to §50-219 and §6-906, Idaho Code, in that the same was not filed within 180 days after completion of the project and at which time the Plaintiff knew the actual cost of his construction and the alleged amount for which the city would allegedly be liable and is barred by Title 6, Chapter 9, Idaho Code.

FIFTH DEFENSE

The Plaintiff was aware of the cost of the waterline improvements in October, 2003. Plaintiff was required to have commenced an action for recovery of said sum within two years after said date. Plaintiff's action is barred pursuant to §6-911, Idaho Code.

SIXTH DEFENSE

The Plaintiff submitted a Notice of Claim to the Defendant dated July 31, 2006 which is attached to Plaintiff's complaint as Exhibit "D". The Notice of Claim was not submitted within 180 days from the day the claim arose or reasonably should have been discovered as required by §6-906 and 50-219, Idaho Code. As such, the claim is barred pursuant to §6-908, Idaho Code, and this action is barred pursuant to §6-911, Idaho Code.

SEVENTH DEFENSE

The Notice of Claim of Plaintiff's dated July 31, 2006 (Exhibit "D" to Plaintiff's Complaint) was for the sum of $10,603.60. The Plaintiff seeks to now recover $13,153.64. Said Complaint for any sum in excess of the amount claimed is invalid pursuant to Title 6, Chapter 9, Idaho Code.

EIGHTH DEFENSE

§16.28.030 B, Preston Municipal Code, requires a subdivider to have first paid the costs of any installation of facilities to the city, requires that costs of construction of the facilities be determined by competitive bidding, requires that an engineer verify the costs of said project, and requires an agreement between the City and the Subdivider. The Plaintiff failed to comply with the provisions of said Section in that he did not pay the cost of such facilities to the city, did not request or require that the same be determined by competitive bids, did not submit a verified engineering report substantiating the costs, or enter into an agreement with the City prior to installing said line. Therefore, the Plaintiff is barred from recovery pursuant to said Code Section.

NINTH DEFENSE

The Defendant denied Plaintiff's request for reimbursement of October 22, 2004, (Exhibit "C" hereto) by letter from Defendant's attorney dated November 16, 2004, a copy of which is attached hereto as Exhibit "D". Nevertheless, the Plaintiff failed to file a Notice of Claim until July 31, 2006. (Exhibit "D" to Plaintiff's Complaint) A reasonable and prudent person would have knowledge of the alleged wrongful act, i.e., the city's denial of any agreement between the Defendant and Plaintiff, and the rejection of Plaintiff's request for reimbursement. Therefore, the 180 day notice period required pursuant to §6-906, and §50-219, Idaho Code, commenced on November 16, 2004, which Notice of Claim the Plaintiff failed to timely submit, and Plaintiff's claim in barred pursuant to Title 6, Chapter 9, Idaho Code.

TENTH DEFENSE

If the City has failed to collect a fee from an intervening property owner connecting to said waterline, the same arose from an act or omission of an employee of the governmental entity exercising ordinary care, in reliance upon or in the execution or performance of a statutory or regulatory function or based upon the failure of said employee to exercise or perform a discretionary function or duty, and the Defendant has no liability to the Plaintiff pursuant to §6-904, Idaho Code.

ELEVENTH DEFENSE

If the City were required to obtain or collect a fee for reimbursement to the Plaintiff as a result of §16.28.030B, Preston Municipal Code, failure to do so was as a result of an employee, acting within the course or scope of his employment, without malice or criminal intent, and without reckless willful and wanton conduct, and the City is not liable for the assessment or collection of such fee from intervening property users pursuant to 6-904A, Idaho Code.

TWELFTH DEFENSE

Plaintiff has a plain, speedy and adequate remedy in the ordinary course of law for determination of his claim and collection of any sums allegedly owing him together with the right to appeal any verdict of this court. Therefore, a writ of mandate is not available to Plaintiff, and said request should be denied.

THIRTEENTH DEFENSE

Monies collected for connections to waterlines within the city are for reimbursement to the city of the costs of labor, equipment, and materials incurred by the Defendant used in the connection. The city realizes no profit from its connections, and Plaintiff's claim for unjust enrichment should be denied.

FOURTEENTH DEFENSE

The Plaintiff has received payment for the costs of his improvements through sales and purchases of lots within Creamery Hollow Subdivision. If the Defendant were required to reimburse Plaintiff, the Plaintiff would be unjustly enriched at the expense of Defendant.

FIFTEENTH DEFENSE

The Plaintiff Scott Beckstead Real Estate Company is not the real party in interest, and said action should be dismissed.

SIXTEENTH DEFENSE

Scott Beckstead, individually was the Subdivider and Developer of the Creamery Hollow Subdivision. Plaintiffs assert that Scott Beckstead Real Estate Company, an Idaho Corporation, and a separate entity, paid for the costs of construction. The real estate company was not the Developer. Therefore, Scott Beckstead, individually, suffered no damages, and has no claim as against the City.

SEVENTEENTH DEFENSE

Plaintiff's have no claim as against the City, as §16.28.030B, Preston Municipal Code, the Ordinance relied upon by the Plaintiffs places no duty or obligation upon the city to pay the claim asserted by the Plaintiffs in the event of its failure to not collect fees from intervening property owners connecting to said waterline.

EIGHTEENTH DEFENSE

Plaintiff's complaint fails to state a claim upon which relief may be granted, and the same should be dismissed.

NINETEENTH DEFENSE

Defendant denies each and every allegation of Plaintiff's complaint unless hereinafter specifically admitted.

ANSWER TO COMPLAINT

1. Defendant admits Paragraphs 1 and 2 of Plaintiff's Complaint.

2. In response to Paragraphs 3 and 4, Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments contained therein.

3. Defendant admits Paragraphs 5 and 6 of Plaintiff's Complaint.

4. In response to Paragraph 7, Defendant admits that the City of Preston required the Plaintiff to install waterline to connect his subdivision to the city water mains. The Defendant denies that the same constituted 1,700 feet, and affirmatively alleges that the line was 1,650 long, and the Defendant reimbursed the Plaintiff for the upgrade from 6-inch to 12-inch line.

5. In response to Paragraph 8, the Defendant admits that the waterline was completed by Plaintiff in October of 2003.

6. In response to Paragraph 9, Defendant admits that the Plaintiff was aware of the intervening connections to the waterline as of October, 2004. Defendant admits that the Plaintiff wanted reimbursement for the costs of the waterline. The Defendant admits that Darrell Wilburn did discuss reimbursement of the waterline with him, denies that the City Engineer advised the Plaintiff that this was "the type of situation for which the Ordinance was written", and denies that the City Engineer suggested he request reimbursement from the city. The Defendant does affirmatively allege that the Plaintiff did discuss reimbursement for the waterline with the City Engineer, and that the Plaintiff was advised to discuss it with the City Clerk.

7. In response to Paragraph 10, Defendant admits that the Plaintiff submitted a letter requesting reimbursement from the city for said waterline improvements, denies that the same constitutes a claim pursuant to Title 6, Chapter 9, Idaho Code, or pursuant to §50-219, Idaho Code, and affirmatively alleges that said request for reimbursement was denied by the Defendant pursuant to letter from Defendant's attorney dated November 16, 2004. (Exhibit "D" hereto)

8. In response to Paragraph 11, the Defendant admits that it submitted a letter of November 16, 2004, (Exhibit "B" of Plaintiff's Complaint and Exhibit "D" hereto) but denies that Plaintiff's letter constituted a claim as required by Title 6, Chapter 9, Idaho Code.

9. In response to Paragraph 12, Defendant admits to receipt of the letter of April 11, 2006, attached to Plaintiff's Complaint as Exhibit "C". The Defendant further affirmatively alleges that the Defendant did respond to said letter by letter dated May 24, 2006 wherein the Defendant confirmed its prior denial of Plaintiff's request for reimbursement. A copy of said letter is attached as Exhibit "E".

10. In response to Paragraph 13, Defendant admits that the Plaintiff made the waterline construction improvements for the benefit of his Subdivision, and further admits that the City chose not to reconsider Plaintiff's claim for reimbursement by letter of May 24, 2006 (Exhibit "E").

11. In response to Paragraphs 14, 15, 16, and 17, Defendant denies the same.

12. In response to Paragraphs 18, 20, 23, 27 and 33, Defendant adopts its responses to Paragraphs 1-17 of Plaintiff's Complaint as if more fully set forth herein.

13. Defendant denies Paragraphs 19, 21, 22, 24, 25, and 26 and affirmatively alleges that the Plaintiff created a subdivision known as Creamery Hollow Subdivision, which contains 22 lots, and the waterline constructed by Plaintiff was necessary for the construction of said subdivision and benefitted the Plaintiff. The Defendant further asserts that the hook up fees charged by the Defendant to other persons who connect to said waterline are for labor, materials, and equipment used by the city in making said connections and the same constitute reimbursement to the city for its costs.

14. In response to Paragraph 28, Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments, and affirmatively alleges that the Defendant was aware of water connections being made to the waterline as early as October, 2004 as evidenced by his letter to the Defendant dated October 22, 2004 attached to Plaintiff's Complaint as Exhibit "A" and this Answer as Exhibit "C".

15. In response to Paragraph 29, Defendant admits that Plaintiff submitted a Notice of Claim dated July 31, 2006 attached to Plaintiff's Complaint as Exhibit "D".

16. In response to Paragraph 30, Defendant admits that 90 days lapsed between the Notice of Claim of July 31, 2006, and the date that the Complaint was filed. Said

claim was denied by Defendants failure to respond pursuant to §6-909, Idaho Code.

17. In response to Paragraph 31, Defendant admits that connections have been made to said waterline since the construction of the same by the Plaintiff.

18. Defendant denies Paragraphs 32 and 34.

WHEREFORE, DEFENDANT PRAYS FOR JUDGMENT AS FOLLOWS:

1. That Plaintiff's claim be dismissed and Plaintiff take nothing by reason thereof.

2. That Defendant recover from Plaintiff its attorney fees and costs incurred in this action pursuant to §12-117, §12-120 and §12-121, Idaho Code.

3. For such other and further relief as the court finds just and equitable.

Dated this 21 day of May, 2007.

CLYDE G. NELSON

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Defendant's Answer to Plaintiff's Second Amended Complaint was served by first class mail, postage prepaid on this 21 day of May, 2007.

Steven R. Fuller
Attorney at Law
24 North State
Preston, ID 83263
Facsimile: (208) 852-2683

[x] U.S. Mail
[ ] Facsimile
[ ] Hand Delivered

Clyde G. Nelson

ORDINANCE NO. 461

AN ORDINANCE OF THE CITY OF PRESTON, IDAHO, PERTAINING TO THE CONSTRUCTION OF SEWER OR WATER LINES WITHIN THE CITY BY PROPERTY OWNERS AT THEIR OWN EXPENSE; REQUIRING PROPERTY OWNERS WHO LATER CONNECT TO SAID LINES TO PAY A PROPORTIONATE COST OF SAID LINES; PROHIBITING CONNECTION TO SAID LINES WITHOUT PAYMENT OF SAID COSTS; ESTABLISHING A PROCEDURE FOR VERIFYING COSTS OF CONSTRUCTION, APPORTIONING THE COSTS OF CONSTRUCTION AND FILING A CERTIFIED STATEMENT OF COSTS AND PAYMENTS OF COSTS;. PROVIDING FOR COLLECTION OF FUNDS AND DISTRIBUTION THEREOF AND PLACING A TIME LIMIT THEREON; PROVIDING THAT THE SAME SHALL NOT APPLY TO SUBDIVIDERS; PROVIDING FOR A PENALTY FOR VIOLATION OF ORDINANCE AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, there are times when residents of the City of Preston, Idaho, desire to connect to the municipal water or sewer system and make application therefore, without the formation of a local improvement district for construction of the necessary water or sewer line which will provide service to the applicants' property as well as to other property belonging to residents of the City and for which the applicants desire to pay in full for said line or lines at the time of construction; and

WHEREAS, in such instances there are some residents who own property for which service will be provided by said line or lines and who do not wish to join in the construction of said lines or to pay their proportionate cost thereof; and

WHEREAS, the public health, safety, and welfare of the residents of the City require the City to encourage the construction and development of such water and sewer lines within the corporate limits of the City;

NOW THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF PRESTON, IDAHO, AS FOLLOWS:

Section 1. Whenever any water or sewer line is to be constructed by a property owner or owners within a certain area of the City which encompasses a greater area than the property owner-applicants' property, and which is connected to the municipal system, and which is fully paid for by the property owner at the time of construction, the City may require any person or property owner, thereafter desiring to connect to said line or lines to pay to the City Clerk of the City of Preston, Idaho a sum of money equal to the proportionate cost of construction of said line or lines which such person or property owner

Exhibit "A"

would have paid had such person or property owner participated in the cost of the initial construction.

Section 2. No permit to connect to said line or lines shall be granted by the City to any person desiring to connect to the same, and no person shall connect to said line prior to payment to the City Clerk of that person's proportionate share of the cost of construction of said line.

Section 3. On completion of said line by the property owner or person constructing the same, said person shall file with the City Clerk a verified statement of the total cost of construction of said line. The City shall have the right to request such documentation as may be necessary to verify the cost alleged and may adjust these costs when, in the City Coucil's determination, the same are excessive.

Section 4. (a) Upon receipt of said verified statement the City Clerk or her designee shall compute the amount of said costs of construction attributable to properties which can be served by said water or sewer lines, when said property abutts, adjoins or is adjacent thereto, or said properties are benefited by such improvements, and such assessments shall be computed according to the front foot method, a square foot method, or a combination thereof; or in proportion to the benefits derived to such property by the improvements.

(b) After preparation of said computations the City Clerk or her designee shall prepare a certified statement setting forth the cost of construction attributable and assessed against each piece of property benefiting from said construction whose owner did not join in the payment in the initial cost of construction, and the City Clerk shall cause the same to be filed in the City records and recorded in the office of the County Recorder of Franklin County, Idaho.

Section 5. Any person or property owner who did not participate and share in the cost of construction who desires to connect to said line or lines shall, at the time of making said application to the City, pay to the City Clerk the amount computed by the City Clerk or her designee as the amount assessed against the property for the proportionate cost of construction in addition to any other fees for connection so assessed by the City. Upon payment in full of said sum

the City Clerk shall cause a permit for connection to be issued and shall file in the Office of the County Recorder of Franklin County, Idaho, a certified statement showing payment of said sum assessed against the property for construction.

Section 6. The City Clerk shall deposit those funds obtained from payment of the proportionate share of construction costs into a trust fund established for that purpose for the benefit of the original contributors or their successors in interest. As monies are paid into the fund, the City Clerk shall make distribution of the same to the person or persons originally paying for the cost of construction in the amounts that such person or persons are entitled. If the person owning property who originally paid for the cost of construction shall have transferred his interest therein to another, the City Clerk shall pay said sum to the owner of record at the time payment is made. If said property has been transferred to a third party pursuant to a contract of sale, the City Clerk shall make payment of said sum to the purchaser only if said contract authorizes the same and is filed in the Office of the City Clerk prior to said application for permit to connect.

Section 7. All water or sewer lines constructed under this ordinance shall be constructed only with the approval of the City Council, and said lines shall be constructed in accordance with all State of Idaho and City specifications and standards and shall be constructed under the authority and supervision of the City. All lines so constructed, and their appurtenances thereto, shall become the property of the City upon completion and acceptance by the City. Prior to said construction the applicant shall submit detailed plans and specifications for the proposed water or sewer lines to the City Council for approval.

Section 8. This ordinance shall not apply to subdividers of property within the City, and a subdivider shall construct all water and sewer lines at his own cost and expense in accordance with the subdivision ordinance of the City as well as any other applicable ordinances or regulations of the City.

ORDINANCE NO. 2004-7

AN ORDINANCE OF THE CITY OF PRESTON, IDAHO, REPEALING SECTION 16.28.030(B) OF THE PRESTON MUNICIPAL CODE RELATING TO REIMBURSEMENT TO SUBDIVIDERS FOR IMPROVEMENTS MADE UNDER THE SUBDIVISION ORDINANCE; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT WITH THIS ORDINANCE; WAIVING THE REQUIREMENT THAT THIS ORDINANCE BE READ ON THREE (3) SEPARATE OCCASIONS; AND ESTABLISHING AN EFFECTIVE DATE OF THIS ORDINANCE.

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF PRESTON, IDAHO, AS FOLLOWS:

Section 1: Section 16.28.030(B) of the Preston Municipal Code is hereby repealed.

Section 2: All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed.

Section 3: The rule requiring that this ordinance be read on three (3) separate occasions is hereby waived.

Section 4: This ordinance shall be in full force and effect from and after its passage, approval, and publication according to law.

PASSED AND APPROVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF PRESTON, IDAHO, this 13th day of December, 2004.

CITY OF PRESTON, IDAHO

NEAL LARSON, Mayor

ATTEST:

JERRY C. LARSEN, City Clerk

Exhibit "B"

Farm Lands and Ranches
Residential Properties

Income Properties
Business Opportunities

SCOTT
BECKSTEAD
REAL ESTATE CO.

32 WEST ONEIDA - PRESTON, IDAHO 83263
PHONE (208) 852-3199

October 22, 2004

Mayor Neal Larson
City of Preston
70 West Oneida
Preston, Idaho 83263

Dear Mayor Larson,

Under the Preston Subdivision Ordinance Section 16.28.030 paragraph B, a subdivider is entitled to reimbursement for costs associated with "off site" improvements required by the city in the process of subdivision approval. One such "off site" improvement was a water line on 800 East that was required of me to install for approval of the Creamery Hollow Estates Subdivision. I understand that several water connections have been made to that line.

I would like to arrange a time that we could meet to discuss the process of such reimbursement. Also, if there is any information that you may need from me showing actual costs of installation of that line, please let me know.

I can be reached at 852-3199 which is the office number or on my cell phone which is 339-1512. I would be happy to meet you at any time.

Sincerely,

Scott L. Beckstead

REALTOR

WE'RE HERE TO HELP

02

Exhibit "C"

CITY OF PRESTON

CLYDE G. NELSON
CITY ATTORNEY
172 S. MAIN
P. O. BOX 797
SODA SPRINGS, IDAHO 83276

TELEPHONE
(208) 547-2135

FACSIMILE
(208) 547-2136

November 16, 2004

Scott Beckstead
Beckstead Real Estate Co.
32 West Oneida
Preston, ID 83263

Re: Subdivision Ordinance / Creamery Hollow Subdivision

Dear Scott:

Mayor Larson has asked that I reply to your letter of October 22, 2004, in regard to your request to be reimbursed for "costs associated with 'off site' improvements required by the city in the process of subdivision approval." You are suggesting that you are entitled to reimbursement for improvements on a waterline on 800 East Street.

The section to which you refer is §16.28.030(B). That section reads as follows:

"16.28.030 B. Whenever any intervening property ("off-site") is benefitted by the installation of any of the required facilities, the subdivider may pay the cost of such facilities to the city, such costs to be determined by competitive bids solicited by the city together with verified engineering costs required therefor. The city shall thereafter enter a deferred credit in its books and records and shall charge the benefited intervening property owners the fee rates for sewer and water connections in effect at the time such connections are made. Such fees shall then be returned to the subdivider to reimburse the cost of the installation of the facilities; such agreement for reimbursement shall extend for a maximum period of five (5) years from initial date of agreement after which time no further reimbursement shall be made to the subdivider. The city may also elect to reimburse the subdivider for such "off-site" facilities in full or in part after the subdivider has furnished the city with acceptable evidence that an agreed number of housing units are occupied. No interest shall accrue or become payable on such reimbursement. Engineering drawings showing benefited property shall be prepared by the city engineer and copies forwarded to the sewer, water and streets department of the city."

This section does not require the city to reimburse you and repeatedly refers to an agreement entered into between the parties which would allow for reimbursement to the subdivider if the subdivider had paid the City for the construction improvements. You did not.

94

Exhibit "D"

Re: Subdivision Ordinance / Creamery Hollow Subdivision

The agreement must be approved prior to the development. In addition to the section requiring a contract prior to the construction, the cost of the construction is to be determined by "competitive bids solicited by the city together with verified engineering costs required therefor." If you had desired reimbursement for these improvements, it would have been necessary that an agreement be executed, that competitive bids be solicited pursuant to that agreement and that an engineer verify the costs required for the construction. There was no agreement, there were no competitive bids, no verified engineering study, and no payment by you to the City.

This section is similar to those requirements set forth for local improvement districts. (Chapter 17, Title 50, Idaho Code). To create a local improvement district there must first be a resolution to create the district. Included within the resolution is a requirement that the total costs and expenses of the project and percentage that will be paid by the city and the local improvement district be included. A determination must be made as to which properties will be benefitted by the improvements, and how they will be benefitted. For example, the engineer could determine that an intervening piece of property could not be developed, and only one connection would be attributed to that property. In another intervening piece of property, the engineer could determine that the property could be developed into one hundred lots. An amount would be paid to the City, but the amount paid to you as reimbursement, would be based upon the total number of lots that could be developed on the intervening properties verses the number of lots which you have developed. In addition, you only paid for a portion of the cost of the line, and any payment by the City to you would have to based upon a percentage of the total cost of the line.

I think that the reasons set forth above are quite clear as to why your request would have to be rejected. I hope this letter answers your questions as to the City's position. If you have any additional questions, please feel free to contact me.

Sincerely,

CLYDE G. NELSON

CGN:jn
cc: Mayor and City Council
Darrell Wilburn

CITY OF PRESTON

CLYDE G. NELSON
CITY ATTORNEY
172 SOUTH MAIN STREET
P. O. BOX 797
SODA SPRINGS, IDAHO 83276

TELEPHONE
(208) 547-2135

FACSIMILE
(208) 547-2136

May 24, 2006

Steven R. Fuller
Attorney at Law
24 North State Street
P.O. Box 191
Preston, ID 83263

Re: Scott Beckstead / Requested Reimbursement

Dear Steve:

Thank you for your letters of May 19, 2006, and April 11, 2006. I did discuss your first letter with the City Council at the last meeting which I attended on May 8, 2006. The City Council reviewed your letter, and my prior letter to Scott Beckstead dated November 16, 2004. The City Council chose not to reconsider its prior response as contained in my letter.

In addition thereto, I do not believe that Scott has complied with §50-219 and §6-906, Idaho Code. I direct your attention to the case of Magnuson Properties v. Coeur D' Alene 138 Idaho 166.

If you have any questions, please contact me.

Sincerely,

CLYDE G. NELSON

CGN:sh
cc: City Council

Exhibit "E"

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

SCOTT BECKSTEAD REAL ESTATE COMPANY, an Idaho Corporation, and Scott Beckstead, Individually, Plaintiff, vs. CITY OF PRESTON, Defendant.	CASE NO. CV-2006-390 **ORDER EXTENDING TIME FOR MOTIONS FOR SUMMARY JUDGMENT**

A Stipulation having been filed with this court to extend the time for the filing of Motions for Summary Judgment, and good cause appearing therefore:

NOW, THEREFORE, it is hereby ordered that the time for the filings of Motions for Summary Judgment is hereby extended to June 21, 2007.

Dated this 29th day of May, 2007.

Don L. Harding
District Judge

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the foregoing document was served by first class mail, postage prepaid, by facsimile, or hand delivered on this 30 day of May, 2007.

Steven R. Fuller
Attorney at Law
24 North State
PO Box 191
Preston, ID 83263
Facsimile: (208) 852-2683

[ ] U.S. Mail
[✓] Facsimile
[ ] Hand Delivered

Clyde G. Nelson
Attorney at Law
P.O. Box 797
Soda Springs, ID 83276
Facsimile (208) 547-2135

[ ] U.S. Mail
[✓] Facsimile
[ ] Hand Delivered

Linda Hampton

CLYDE G. NELSON
Attorney at Law
172 South Main Street
P.O. Box 797
Soda Springs, ID 83276
Telephone: (208) 547-2135
Facsimile: (208) 547-2136
Idaho State Bar No. 1197

Attorney for Defendant

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

SCOTT BECKSTEAD REAL ESTATE, COMPANY, an Idaho Corporation, and Scott Beckstead, Individually Plaintiff, vs. CITY OF PRESTON, Defendant.	CASE NO. CV-2006-390 **MOTION FOR SUMMARY JUDGMENT**

COMES NOW, Defendant, City of Preston, Idaho, by and through its attorney of record Clyde G. Nelson, and pursuant to Rule 56 of the Idaho Rules of Civil Procedure, moves this court to enter its Order granting summary judgment in favor of the Defendant and against the Plaintiff. This Motion is made upon the grounds and for the reasons that there are no genuine issues of material fact, and that Defendant is entitled to judgment as a matter of law.

This Motion is based upon the pleadings in this case, the affidavits of Jerry C. Larsen, Darrell Wilburn, John Balls, and Clyde G. Nelson, and the Memorandum submitted by Defendant's counsel.

Dated this 20 day of June, 2007.

CLYDE G. NELSON
Attorney for Defendant

99

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20 day of June, 2007, I served a true and correct copy of the foregoing document upon the following by US Mail, postage prepaid, facsimile, or hand delivered, addressed to:

Steven R. Fuller
Attorney at Law
P.O. Box 191
Preston, ID 83263

[✓] US Mail
[ ] Facsimile
[ ] Hand Delivered

Clyde G. Nelson

STEVEN R. FULLER – 2995
Steven R. Fuller Law Office
24 North State
P.O. Box 191
Preston, ID 83263
Telephone: (208) 852-2680
Facsimile: (208) 852-2683

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

SCOTT BECKSTEAD REAL ESTATE COMPANY and SCOTT BECKSTEAD, an individual, Plaintiffs, vs. CITY OF PRESTON, Defendant.	CASE NO. CV-06-390 **AFFIDAVIT IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

STATE OF IDAHO)
) ss
County of Franklin)

SCOTT BECKSTEAD, being first duly sworn, deposes and says as follows:

1. I am one of the principals of Scott Beckstead Real Estate Company, an Idaho Corporation, and have personal knowledge of the facts and circumstances of the above-entitled action. The statements and representations made in this Affidavit are made on my own behalf and as an agent and principal of Scott Beckstead Real Estate Company.

2. In July of 2002, I acquired certain real property located within the boundaries of the City of Preston (hereafter "City") for the purpose of real estate development. Prior

to purchasing the property, I met with a representative of the City; namely, Darrell Willburn, former City Engineer, and inquired as to what City utilities, if any, would need to be brought to the property if it were to be developed. With regards to the City water system, I was told by Darrell Willburn that the water line to which I would connect needed to be at least a 6-inch water line and that water pressure necessary to meet fire flow standards would need to be determined from the City's existing pipeline adjacent to the property to be developed. A test by the City Engineer and the Director of Public Works, Scott Martin, was performed and before any purchase of the property was made, I was informed by Mr. Willburn fire flow pressure standards were adequate and sufficient water flow existed to service my proposed subdivision in that area and that the line to which I would connect was a 6-inch water line. Later, the City decided it wished to improve the City water system and determined I would need to put in a pipeline before my proposed subdivision could be approved. Although I felt the requirement to be arbitrary and unnecessary because fire flow standards had been met, I was aware of a City Ordinance which would allow me to recoup the pipeline costs over time, therefore, I decided not to object to the installation of the pipeline so the project could go forward. (Please see Exhibit "A", the letter from the City Engineer dated April 8, 2003 indicating the existing pipeline had sufficient flow to meet fire standards.)

3. In December of 2002, I submitted to the City a preliminary plat for approval of a subdivision to be located at approximately 600 East Oneida Street in Preston, Idaho. The name of the proposed subdivision was Creamery Hollow Estates Subdivision.

4. On July 28, 2003, the City of Preston approved the final plat of the Creamery Hollow Estates Subdivision.

5. One of the conditions imposed by the City for approval of the Creamery Hollow Estates Subdivision was that I had to install 1,700 feet of 12-inch pipe along 800 East in Preston, Idaho, a location North of Oneida Street and separated from the Creamery Hollow Estates Subdivision by approximately 1/4 mile. At the time of the Subdivision approval, the City gave me the option of placing the pipeline along Oneida Street or along 800 East. After consulting with City officials, the site for construction of the pipeline along 800 East was chosen, since it would enhance the City's ability to "loop" its pipeline system. Since there are buried irrigation pipelines in the area the new line was to be installed, it was agreed that construction would be done after the irrigation season. The pipeline consisting of approximately 1,700 feet was installed in October, 2003.

6. Since the water line I installed was to connect to an existing 6-inch water line, the City agreed to pay for the additional cost for expanding the 6-inch pipeline to a 12-inch pipeline, or in other words, the difference between the cost of a 6-inch pipeline versus a 12-inch pipeline. The City did reimburse me for the extra cost of purchasing larger pipe.

7. I purchased 1,060 feet of 12-inch C-900, Class 200 pipe from Irrigation Aid at $10.91 per linear foot, for a total of $11,564.60. This was all the 12-inch pipe Irrigation Aid had in stock. (Please see the Irrigation Aid invoice attached hereto as Exhibit "B")

8. I purchased 180 feet of 12-inch, C-900 pipe at $12.23 per linear foot, for a total of $2,345.64. (a copy of the invoice for this purchase is attached hereto as Exhibit "C")

9. Four hundred sixty linear feet of 12-inch pipe was supplied by the City of Preston.

10. I hired Gary Cahoon of Gary's Backhoe Service to perform labor and provide equipment for excavation on the project. I paid his invoice in the amount of $3,500.00, a copy of which is attached hereto as Exhibit "D".

11. I provided the labor and materials to install and connect the pipe for which a reasonable charge would be $1.65 per linear foot for a total of $2,805.00.

12. The City of Preston reimbursed me the sum of $7,061.60 for the difference between the 12-inch pipe and 6-inch pipe installed along 800 East, however, no reimbursement has been made for the balance of my labor and materials, excavation expense and pipeline materials cost. The amount of unreimbursed expenses and labor are as follows:

Total Pipe Costs	$13,910.24
Deduction for reimbursement by City	($7,061.60)
Balance of Pipe Costs	$6,848.64
Excavation Costs	$3,500.00
Labor and Materials by Scott Beckstead	$2,805.00
Total	**$13,153.64**

13. Prior to developing the Creamery Hollow Subdivision, I was aware a City Ordinance existed for reimbursement for off-site improvements made by a subdivider. During the course of discussing the requirements of the City for the Creamery Hollow Estates Subdivision, the City Engineer, Darrell Willburn, confirmed to me that pursuant to City Ordinance, I should be reimbursed the costs of the materials and labor used to construct and install the water pipeline. Further research revealed the details of City Ordinance, Section 16.28.030 B which provided for reimbursement during a five-year period for "off-site" improvements as water connections were made to the pipeline I had installed. (A copy of the Ordinance is attached hereto as Exhibit "E")

14. In October of 2004, I learned that a water connection was being sold by the City and was to be connected to the water pipeline which I had installed along 800 East. By letter dated October 22, 2004, I made a claim to the City for reimbursement for the "off-site" improvements as mandated in the City Ordinance. A copy of said letter is attached hereto and incorporated herein by reference as Exhibit "F". I asked for an opportunity to meet with the City Council in order to discuss the process of reimbursement, but instead, I received a letter from Clyde J. Nelson, City Attorney, dated November 16, 2004 (a copy of which is attached hereto as Exhibit "G") denying my claim, stating that an agreement was needed with the City prior to developing in order for reimbursement to take place. I was not made aware of any requirement for an agreement, written or otherwise, for the City Ordinance to be effective, nor do I believe such an agreement is required.

15. Pursuant to responses to discovery requests prepared by the City , I learned water line connections had been made along 800 East as set forth in Exhibit "H" attached hereto. Although water connection fees were apparently paid in 2004 for the water connections, building permits were issued and the actual physical connections to the water system were made at various times from 2004 through 2006.

16. On July 31, 2006, a second Notice of Claim was presented to the City of Preston on my behalf by my counsel, citing additional water connections that had been made to the water pipeline I installed along 800 East. A copy of this Notice of Claim is attached hereto as Exhibit "I". Each time a water connection was made to the pipeline I installed, I assert a new or ongoing claim arose for each such water connection and a right of reimbursement for each such connection is a another claim based upon the City Ordinance.

17. I believe I should be entitled to receive reimbursement from the City for my costs and labor, interest and attorneys fees as a result of the City's failure to comply with its own ordinance in effect at the time I purchased and installed the water pipeline along 800 East in Preston, Idaho.

DATED this 21st day of June, 2007.

SCOTT BECKSTEAD

SUBSCRIBED AND SWORN to before me this 21st day of June, 2007.

SUZANNE HADLEY
NOTARY PUBLIC
STATE OF IDAHO

NOTARY PUBLIC in and for the State of Idaho
Residing at: Swan Lake, Id
Comm. Exp: 8.11.09

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing AFFIDAVIT IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT was served on the 21st day of June, 2007.

On:	By:
CLYDE G. NELSON **ATTORNEY AT LAW** **PO BOX 797** **SODA SPRINGS, ID 83276**	___✔_MAIL, POSTAGE PRE-PAID _____ HAND DELIVERY _____TELEPHONE FACSIMILE (208) 547-2136

STEVEN R. FULLER

Exhibit A

City of Preston

70 West Oneida • Preston, Idaho 83263

Office (208) 852-1817
Fax (208) 852-1820

April 8, 2003

Department of Environmental Quality
223 S. Arthur
Pocatello, ID 83204

RE: Creamry Hollow Estates

In reference to the above captioned matter, the City of Preston has sufficient water and sewer capacity to serve this project and the city will allow access to these services for this project. This project will also provide secondary water for outside watering per City Ordinance.

This location has passed fire flow test, by the Fire Marshall. This project has been included in the computerized hydraulic analysis, which indicates that fire flow will be adequate during the peak day.

On December 23, 2002, the City Council approved the preliminary plat for this project.

If you have any questions, please contact me.

Sincerely;

Darrell Wilburn, P.E.
City Engineer

cc: file

Exhibit B

IRRIGATION AID COMPAN

Invoice

472 North State
Preston, ID 83263

Bill To	Ship To
Beckstead Scott 32 West Onieida Street Preston ID. 83263	Beckstead Scott 32 West Onieida Street Preston ID. 83263

P.O. Number	Terms	Rep	Ship	Via	F.O.B.	Date	Invoice #
	Net 30	SP	11/4/2003			11/4/2003	3491

Quantity	Item Code	Description	Price Each	Amount
1,060	non	12" C-900 Class 200	10.91	11,564.60

Subtotal	$11,564.60
Sales Tax (0.0%)	$0.00
Total	$11,564.60
Payments/Credits	$-11,564.60
Balance Due	$0.00

WE ARE NOT RESPONSIBLE FOR GOODS LEFT OVER 30 DAYS!!!! PRICES ARE SUBJECT TO CHANGE AT ANY TIME WITHOUT NOTICE!!!!

AGRICULTURE TAX EXEMPTION NOTICE AND TERMS OF PAYMENT

I certify the property wich has been purchased will be used for irrigation equipment and supplies used for agriculture production purposes.

TERMS OF PAYMENT

Without grace for value received, I promise to pay to the order od seller the heron mentioned amounts payable as herein set forth, and if placed with an attorney for collection or suit, I agree to pay a reasonable attorney's fee. A FINANCE CHARGE od 1 1/2% per month--ANNUAL RATE of 18% will be computed on all delinquent accounts.

X

TERMS OF PAYMENT

Without grace for value recieved, I promise to pay to the order of seller theron mentioned amounts payable as herein set forth, and if placed with an attorney for collection or suit, I agree to pay a reasonable attorney's fee. A FINANCE CHARGE of 1 1/2% per month--ANNUAL RATE of 18% will be computed on all delinquent accounts.

X

Exhibit C

W R WHITE SUPPLY - OGDEN
625 Wall Avenue
OGDEN UT 84404
801-394-6621 Fax 801-626-1315

** INVOICE **

INVOICE DATE	INVOICE NUMBER
10/27/03	S1162745.001

REMIT TO:
W R WHITE SUPPLY
File#72477-210 BOX 60000
SAN FRANCISCO CA 94160

PAGE NO. 1

BILL TO:
BECKSTEAD REAL ESTATE CO.
32 W. ONEIDA
PRESTON, ID 83263

SHIP TO:
BECKSTEAD REAL ESTATE CO.
800 east 100 north
PRESTON, ID 83263

CUSTOMER NUMBER	CUSTOMER ORDER NUMBER	RELEASE NUMBER	SALESPERSON	
1109			Randy Trujillo	
WRITER	SHIP VIA	TERMS	SHIP DATE	ORDER DATE
JODIC	OT A R1 UTAH	Net Due 30 Days	10/27/03	10/27/03

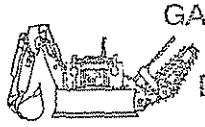
ORDERED	SHIPPED	DESCRIPTION	NET UNIT PRICE	NET AMOUNT
180ft	180ft	12" X 20' PVC PIPE C900 DR14 WHITE	12.236E	2202.48
		Prior Deposit on 01/01/04		-2345.64
		** Reprint ** Reprint ** Reprint **		

Subtotal	-143.16
S&H CHGS	0.00
Sales Tax	143.16
Amount Due	0.00

All claims for shortage or errors must be made at once, returns require written authorization and are subject to handling charges. Special orders are non-returnable.

13

Exhibit D



GARY'S BACKHOE SERVICE
4709 W. 1200 N.
DAYTON, IDAHO 83232
(208) 747-3241

588842

Customer's Order No.	Department	Date
		11/10/03

Name: Creamy Follow

Address:

City, State, Zip:

Sold By	Cash	C.O.D.	Charge	On Acct.	Mdse. Retd.	Paid Out

	QUAN.	DESCRIPTION	PRICE	AMOUNT
1				
2		Excavation work digging		
3		+ backfill for 12" City water		350 00
4		main		
5				
6				350 00
7		Thank You		
8				
9		PD		
10				
11				
12				
13				
14				
15				
16				
17				
18				
19				

Received by

Adams DC5808

Keep this Slip for Reference

Exhibit E

Facility Description	Subdivider % of Cost	City % of Cost
7. Storm surface run-off facilities "on-site" and "off-site."	100%	100%
8. Storm sewer facilities.	Special negotiations with the council.	Special negotiations with the council.

B. Whenever any intervening property ("off-site") is benefited by the installation of any of the required facilities, the subdivider may pay the cost of such facilities to the city, such cost to be determined by competitive bids solicited by the city together with verified engineering costs required therefor. The city shall thereafter enter a deferred credit in its books and records and shall charge the benefited intervening property owners the fee rates for sewer and water connections in effect at the time such connections are made. Such fees shall then be returned to the subdivider to reimburse the costs of the installation of the facilities; such agreement for reimbursement shall extend for a maximum period of five (5) years from initial date of agreement after which time no further reimbursement shall be made to the subdivider. The city may also elect to reimburse the subdivider for such "off-site" facilities in full or in part after the subdivider has furnished the city with acceptable evidence that an agreed number of housing units are occupied. No interest shall accrue or become payable on such reimbursement. Engineering drawings showing benefited property shall be prepared by the city engineer and copies forwarded to the sewer, water and streets department of the city. (Ord. 391 Ch. 4 §3, 1974).

Chapter 16.32

MODIFICATIONS AND WAIVERS

Sections:

16.32.010 Procedure for granting. Where the city council finds that extraordinary hardships may result from the strict compliance with these regulations, it may waive the regulations so that substantial justice may be done and the

Exhibit F.

Farm Lands and Ranches
Residential Properties

Income Properties
Business Opportunities

SCOTT
BECKSTEAD
REAL ESTATE CO.

32 WEST ONEIDA - PRESTON, IDAHO 83263
PHONE (208) 852-3199

October 22, 2004

Mayor Neal Larson
City of Preston
70 West Oneida
Preston, Idaho 83263

Dear Mayor Larson,

Under the Preston Subdivision Ordinance Section 16.28.030 paragraph B, a subdivider is entitled to reimbursement for costs associated with "off site" improvements required by the city in the process of subdivision approval. One such "off site" improvement was a water line on 800 East that was required of me to install for approval of the Creamery Hollow Estates Subdivision. I understand that several water connections have been made to that line.

I would like to arrange a time that we could meet to discuss the process of such reimbursement. Also, if there is any information that you may need from me showing actual costs of installation of that line, please let me know.

I can be reached at 852-3199 which is the office number or on my cell phone which is 339-1512. I would be happy to meet you at any time.

Sincerely,

Scott L. Beckstead

Exhibit G

CITY OF PRESTON

CLYDE G. NELSON
CITY ATTORNEY
172 S. MAIN
P. O. BOX 797
SODA SPRINGS, IDAHO 83276

TELEPHONE
(208) 547-2135

FACSIMILE
(208) 547-2136

November 16, 2004

Scott Beckstead
Beckstead Real Estate Co.
32 West Oneida
Preston, ID 83263

Re: Subdivision Ordinance / Creamery Hollow Subdivision

Dear Scott:

Mayor Larson has asked that I reply to your letter of October 22, 2004, in regard to your request to be reimbursed for "costs associated with 'off site' improvements required by the city in the process of subdivision approval." You are suggesting that you are entitled to reimbursement for improvements on a waterline on 800 East Street.

The section to which you refer is §16.28.030(B). That section reads as follows:

"16.28.030 B. Whenever any intervening property ("off-site") is benefitted by the installation of any of the required facilities, the subdivider may pay the cost of such facilities to the city, such costs to be determined by competitive bids solicited by the city together with verified engineering costs required therefor. The city shall thereafter enter a deferred credit in its books and records and shall charge the benefited intervening property owners the fee rates for sewer and water connections in effect at the time such connections are made. Such fees shall then be returned to the subdivider to reimburse the cost of the installation of the facilities; such agreement for reimbursement shall extend for a maximum period of five (5) years from initial date of agreement after which time no further reimbursement shall be made to the subdivider. The city may also elect to reimburse the subdivider for such "off-site" facilities in full or in part after the subdivider has furnished the city with acceptable evidence that an agreed number of housing units are occupied. No interest shall accrue or become payable on such reimbursement. Engineering drawings showing benefited property shall be prepared by the city engineer and copies forwarded to the sewer, water and streets department of the city."

This section does not require the city to reimburse you and repeatedly refers to an agreement entered into between the parties which would allow for reimbursement to the subdivider if the subdivider had paid the City for the construction improvements. You did not.

Re: Subdivision Ordinance / Creamery Hollow Subdivision

The agreement must be approved prior to the development. In addition to the section requiring a contract prior to the construction, the cost of the construction is to be determined by "competitive bids solicited by the city together with verified engineering costs required therefor." If you had desired reimbursement for these improvements, it would have been necessary that an agreement be executed, that competitive bids be solicited pursuant to that agreement and that an engineer verify the costs required for the construction. There was no agreement, there were no competitive bids, no verified engineering study, and no payment by you to the City.

This section is similar to those requirements set forth for local improvement districts. (Chapter 17, Title 50, Idaho Code). To create a local improvement district there must first be a resolution to create the district. Included within the resolution is a requirement that the total costs and expenses of the project and percentage that will be paid by the city and the local improvement district be included. A determination must be made as to which properties will be benefitted by the improvements, and how they will be benefitted. For example, the engineer could determine that an intervening piece of property could not be developed, and only one connection would be attributed to that property. In another intervening piece of property, the engineer could determine that the property could be developed into one hundred lots. An amount would be paid to the City, but the amount paid to you as reimbursement, would be based upon the total number of lots that could be developed on the intervening properties verses the number of lots which you have developed. In addition, you only paid for a portion of the cost of the line, and any payment by the City to you would have to based upon a percentage of the total cost of the line.

I think that the reasons set forth above are quite clear as to why your request would have to be rejected. I hope this letter answers your questions as to the City's position. If you have any additional questions, please feel free to contact me.

Sincerely,

CLYDE G. NELSON

CGN:jn
cc: Mayor and City Council
Darrell Wilburn

Exhibit H

Water Line Connections since November 2002 along 8th East

West Side of 8th East

Homeowner	Address	Water Connection Paid	Amount	Building Permit Approved
Jerre Tewes	203 N 8th E	10/19/2004	2500.00	10/2004 853-2283
Ronald Owen	287 N 8th E	09/29/2004*	*	10/2005 853-3873
Terry Orton	291 N 8th E	09/29/2004*	*	03/2006 853-9037
Dustin Jensen	295 N 8th E	09/29/2004*	*	05/2005 853-9244
~~Dustin~~ Ward Dallas	303 N 8th E	09/24/2004*	*	09/2006 853-2850

East Side of 8th East

Cameron Nielson	48 N 8th E	07/27/2004	2500.00	03/2005 unlisted
Brett Jensen	440 N 8th E	04/14/2003	2500.00	04/2003 853-1911

*Jensen Estates, paid by Jessica Jensen $10,000.00

WATER SERVICE ORDER

1349

Date Issued: 09/29/2004 Employee: LINDA
Service Address: 291 NORTH 8TH EAST
Billing Address:
Owner Name: JESSICA JENSEN
Owner Phone: –
Renter Name:
Renter Phone: –
Renter Deposit: .00
Garbage Can: No

WATER TURN ON: YES Reason: PAID FOR NEW WATER CONNECTION
WATER TURN OFF:

Customer Signature: X _____

Watermaster Signature: Jenn

Date: 10-12-04

Ronald Owen

WATER SERVICE ORDER

1348

Date Issued: 09/29/2004 Employee: LINDA
Service Address: 291 NORTH 8TH EAST
Billing Address:
Owner Name: JESSICAN JENSEN
Owner Phone: –
Renter Name:
Renter Phone: –
Renter Deposit: .00
Garbage Can: No

WATER TURN ON: YES Reason: PAID FOR NEW WATER CONNECTION
WATER TURN OFF:

Customer Signature: X _____

Watermaster Signature: Jenn

Date: 10-12-04

Terry Orton

WATER SERVICE ORDER 1347

Date Issued: 09/29/2004 Employee: LINDA
Service Address: 295 NORTH 8TH EAST
Billing Address:
Owner Name: JESSICA JENSEN
Owner Phone: –
Renter Name.
Renter Phone: –
Renter Deposit: .00
Garbage Can: No

WATER TURN ON: YES Reason: PAID FOR NEW WATER CONNECTION
WATER TURN OFF:

Customer Signature: X

Watermaster Signature:

Date: 10-12-04

Dustin Jensen

WATER SERVICE ORDER 1350

Date Issued: 09/29/2004 Employee: LINDA
Service Address: 303 NORTH 8TH EAST
Billing Address:
Owner Name: JESSICA JENSEN
Owner Phone: –
Renter Name:
Renter Phone: –
Renter Deposit: .00
Garbage Can: No

WATER TURN ON: YES Reason: PAID FOR NEW WATER CONNECTION
WATER TURN OFF:

Customer Signature: X

Watermaster Signature:

Date: 10-12-04

Dallas Ward

WATER SERVICE ORDER 1380

Date Issued: 10/19/2004 Employee: LINDA
Service Address: 203 NORTH 8TH EAST (APPROX.)
Billing Address:
Owner Name: JERRE TEWS
Owner Phone: --
Renter Name:
Renter Phone: --
Renter Deposit: .00
Garbage Can: No

WATER TURN ON: YES Reason: PAID FOR A NEW WATER CONNECTION
WATER TURN OFF:

Customer Signature: X _____

Watermaster Signature: _____

Date: 11-16-04

WATER SERVICE ORDER 1267

Date Issued: 07/28/2004 Employee: LINDA
Service Address: 48 N 8TH E
Billing Address:
Owner Name: CAMERON NIELSON
Owner Phone: --
Renter Name:
Renter Phone: --
Renter Deposit: .00
Garbage Can: No

WATER TURN ON: YES Reason: PAID FOR NEW CONNECTION
WATER TURN OFF:

Customer Signature: X _____

Watermaster Signature: _____

Date: 8-24-04

Exhibit I

NOTICE OF CLAIM

Claimant: Scott Beckstead
Scott Beckstead Real Estate Company

To: City Clerk, Mayor and City Council
City of Preston, Idaho

1. **CONDUCT AND CIRCUMSTANCES REGARDING CLAIM:**

In October, 2003, the Claimant, Scott Beckstead acting on behalf of Scott Beckstead Real Estate Company, installed a ten-inch water line along 1800 East in Preston, Idaho, as a requirement imposed by the City of Preston for approval of a subdivision known as Creamery Hollow Estates. Under the applicable Preston City Ordinance, §16.2.030(B) in effect at the time the water line was constructed, Mr. Beckstead was entitled to reimbursement for the "off-site" improvements made which were to be paid as additional connections were made to the water line over a period of five years. It is the understanding of the Claimant that water connections have been made to the water line along 1800 East in Preston, but no reimbursement has been made to the Claimant. A previous claim was filed by Mr. Beckstead with the City of Preston on October 22, 2004. Each connection to the water line along 1800 East in Preston, Idaho, gives rise to a separate and distinct claim against the City of Preston until full reimbursement has been made. The City of Preston has failed and refused to pay the legitimate claims of the Claimant and has denied him reimbursement pursuant to the set ordinance despite the fact that water connections have been made to the water line along 1800 East.

2. **TIME AND PLACE OF DAMAGE:**

It is the understanding of the Claimant that water connections have been made and water connection fees received by the City of Preston in 2004, 2005 and 2006 which would be sufficient to pay or partially pay the Claimant for the sums he has expended pursuant to the ordinance.

3. **NAMES OF PERSONS OR ENTITIES INVOLVED:**

Scott Beckstead and Scott Beckstead Realty Company.

4. **AMOUNT OF DAMAGES:**

The amount of this claim for labor, costs and materials is the sum of $10,603.60.

RESPECTFULLY SUBMITTED this 31st day of July, 2006, by Steven R. Fuller, Attorney for Scott Beckstead and Scott Beckstead Real Estate Company, 24 North State, Preston, Idaho 83263 - Tel. No. (208) 852-2680.

STEVEN R. FULLER
Attorney for Scott Beckstead and
Scott Beckstead Real Estate Company

cc: Scott Beckstead

STEVEN R. FULLER – 2995
Steven R. Fuller Law Office
24 North State
P.O. Box 191
Preston, ID 83263
Telephone: (208) 852-2680
Facsimile: (208) 852-2683

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

SCOTT BECKSTEAD REAL ESTATE COMPANY, and SCOTT BECKSTEAD, an individually, Plaintiffs, vs. CITY OF PRESTON, Defendant.	CASE NO. CV-06-390 **MOTION FOR SUMMARY JUDGMENT**

COMES NOW, the Plaintiffs, Scott Beckstead Real Estate Company and Scott Beckstead, by and through counsel of record, Steven R. Fuller, and pursuant to Rule 56(a) I.R.C.P. hereby moves this Court for Summary Judgment based upon the pleadings on file with the Court, the Affidavit of Scott Beckstead, with attachments, the Verified 2ND Amended Complaint and Memorandum submitted in support of Plaintiff's Motion for Summary Judgment and further reserves all rights to submit additional briefs, memoranda and affidavits in support of this Motion.

DATED this 21st day of June, 2007.

STEVEN R. FULLER
Attorney for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing MOTION FOR SUMMARY JUDGMENT was served on the 21st day of June, 2007.

On:	By:
CLYDE G. NELSON **ATTORNEY AT LAW** **PO BOX 797** **SODA SPRINGS, ID 83276**	✔ MAIL, POSTAGE PRE-PAID _____ HAND DELIVERY _____ TELEPHONE FACSIMILE (208) 547-2136

STEVEN R. FULLER

STEVEN R. FULLER – 2995
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IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

SCOTT BECKSTEAD REAL ESTATE COMPANY, an Idaho Corporation, and SCOTT BECKSTEAD, individually, Plaintiffs, vs. CITY OF PRESTON, a Municipal Corporation, Defendant.	CASE NO. CV-06-390 **MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

COMES NOW, the Plaintiffs, Scott Beckstead Real Estate Company and Scott Beckstead, by and through counsel of record, Steven R. Fuller, and hereby submits this Memorandum in Support of Plaintiff's Motion for Summary Judgment as follows:

STATEMENT OF FACTS

1. Scott Beckstead is one of the principals of Scott Beckstead Real Estate Company, an Idaho corporation engaged in the business of selling and developing real estate. (hereafter Scott Beckstead, individually and Scott Beckstead Real Estate Company

shall be referred to collectively as "Beckstead"). In July of 2002, Beckstead became interested in certain real property located within the boundaries of the City of Preston (hereafter "City") for the purpose of real estate development. Prior to acquiring the real estate, Beckstead inquired of the City Engineer, Darrell Willburn, what utility services would need to be provided to the real property which he proposed to purchase and develop. Before purchasing the property, he was told by City Engineer, Darrell Willburn, who had performed a flow test at a fire hydrant near the site of the property, that there was sufficient flow to meet fire flow standards. (Beckstead Affidavit, Ex. "A") Based upon this representation, Beckstead then purchased the property in July of 2002. The name of the proposed subdivision was Creamy Hollow Estates Subdivision.

2. During the course of obtaining approval for the subdivision, the City determined it would impose a requirement that Beckstead install 1700 feet of 12-inch pipe along 800 East in Preston, Idaho, a location North of Oneida Street and separated from the Creamery Hollow Estates Subdivision by approximately one-quarter mile. During the approval process, the City gave Beckstead the option of placing the pipeline along Oneida Street or along 800 East. After consulting with City officials, the site for the construction of the pipeline along 800 East was chosen, since it would enhance the City's ability to "loop" its pipeline system. Since buried irrigation water lines existed in the area where the new pipeline was to be installed, it was agreed installation would be done after the irrigation season. On July 28, 2003, the City approved the final plat of the Creamery Hollow Estates Subdivision. The water line consisting of approximately 1,700 feet of 12-inch pipe was installed in October of 2003. (Beckstead Affidavit).

3. Since the pipeline Beckstead was to install connected to an existing 6-inch pipeline, and the City wished to expand the size of the pipeline to meet future needs, the City agreed to pay for the additional cost of purchasing a 12-inch pipe as opposed to the cost of purchasing 6-inch pipe. The City did reimburse Beckstead for the difference between the cost of 12-inch pipe and 6-inch pipe, but did not reimburse Beckstead for the balance of the cost of putting in a new 6-inch water line pursuant to the City's ordinance.

4. Beckstead purchased 1,060 feet of 12-inch C-90, Class 200 pipe from Irrigation Aid at $10.91 per linear foot, for a total of $11,564.60. Since this was all the 12-inch pipe Irrigation Aid had in stock, Beckstead purchased an additional 180 feet of 12-inch C-90 pipe at $12.93 per linear foot from W R White Supply for a total cost of $2,345.64. Four hundred sixty linear feet of 12-inch pipe was supplied by the City. (Beckstead Affidavit, Ex's "B" and "C").

5. Beckstead hired Gary Cahoon of Gary's Backhoe Service to perform labor and provide equipment for excavation on the project. He was paid the sum of $3,500.00 for his services. (Beckstead Affidavit Ex. "D").

6. Beckstead provided labor and materials to install and connect the pipeline for which a reasonable charge would be $1.65 per linear foot for a total of $2,805.00.

7. The City reimbursed Beckstead the sum of $7,061.60 for the difference in cost between the 12-inch pipe and 6-inch pipe, however, no reimbursement has been made for the balance of Beckstead's labor and materials, excavation expense and pipeline materials cost. The amount of unreimbursed expenses and labor are as follows:

Total Pipe Costs	$13,910.24
Deduction for reimbursement by City	($7,061.60)
Balance of Pipe Costs	$6,848.64
Excavation Costs	$3,500.00
Labor and Materials by Scott Beckstead	$2,805.00
Total	**$13,153.64**

(Beckstead Affidavit)

8. Although Beckstead did not feel he should be required to install the pipeline because sufficient fire flow existed at the boundary of the proposed Creamery Hollow Estates development, nevertheless, he was aware of a City Ordinance which provided for reimbursement during a five-year period to him for the costs he had incurred as water connections were made by third parties to the pipeline he had installed. His ability to obtain reimbursement from the City was confirmed to him by former City Engineer, Darrell Willburn.

9. In October of 2004, for the first time, Beckstead learned that a water connection was being sold by the City for a connection to be made to the pipeline which Beckstead had installed along 800 East. By letter dated October 22, 2004, Beckstead made a claim to the City for reimbursement of the "off-site" improvements as mandated by the City Ordinance. In response, Beckstead received a letter from Clyde J. Nelson, Preston City Attorney, dated November 16, 2004, denying his claim and stating an agreement was needed with the City prior to developing in order for reimbursement to take place. Beckstead was not made aware of any requirement for such an agreement, written or otherwise, for the City Ordinance to be effective. (Beckstead Affidavit, Ex's "F" and "G")

10. Following the filing of this action and based upon discovery responses made by the City, Beckstead became aware of additional water connections that had been made

to the pipeline Beckstead installed along 800 East. The actual physical connections to the City pipeline were made at various times from 2004 through 2006. The time periods such water connections were actually made to the City water system are set forth in Exhibit "H" to the Affidavit of Scott Beckstead. *On July 31, 2006, a second Notice of Claim was* presented to the City on Beckstead's behalf by his legal counsel, citing additional water connections that had been made to the pipeline Beckstead had installed along 800 East. (Beckstead Affidavit, Ex. "I")

ISSUE PRESENTED

Does City Ordinance Section 16.28.030 B require the City to reimburse Beckstead for the balance of the costs of installing the pipeline along 800 East in Preston, Idaho?

ARGUMENT

I. STANDARD OF REVIEW FOR SUMMARY JUDGMENT

Summary Judgment under I.R.C.P. 56(c) is proper only when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Edwards v. Conchemco, Inc.*, 111 Idaho 851, 727 P.2d 1279 (Ct. App. 1986).

It is anticipated both parties to this action will file cross-motions for summary judgment. The standard for review in such cases was set forth in *Davis v. Peacock*, 133 Idaho 637, 640, 991 P.2d 362 (1999) where the court stated:

> **Where, as here, the parties have filed cross-motions for summary judgment relying on the same facts, issues and theories, the parties effectively stipulate that there is no genuine issue of material fact which would preclude the district court from entering summary judgment. (cites omitted) Additionally, as the trier of fact, the district court is entitled to arrive at the most probable inferences based upon the undisputed evidence properly before it and grant the summary**

judgment, despite the possibility of conflicting inferences. (cites omitted) The test for reviewing the inferences drawn by the district court is whether the record reasonably supports the inferences.

II. THE PURPOSE AND INTENT OF PRESTON CITY ORDINANCE SECTION 16.28.030 B IS DIRECTLY APPLICABLE TO THE "OFF-SITE" IMPROVEMENTS MADE BY BECKSTEAD TO THE CITY'S CULINARY WATER SYSTEM.

The basis for Beckstead's claim hinges on the applicability and interpretation of City Ordinance Section 16.28.030 B. Although it was later repealed, it is undisputed the ordinance was in effect at the time the Creamery Hollow Estates Subdivision was created and approved by the City and the installation of 1700 feet of 12-inch pipe was made by Beckstead to the City's culinary water system. The ordinance was part of the City's general subdivision ordinance and is quoted hereafter in it's entirety.

> **Whenever any intervening property ("off-site") is benefitted by the installation of any of the required facilities, the subdivider may pay the costs of such facilities to the city, such costs to be determined by competitive bids solicited by the city, together with verified engineering costs required therefore. The City shall thereafter enter a deferred credit in its books and records and shall charge the benefitted intervening property owners the fee rates for sewer and water connections in effect at the time such connections are made. Such fees shall then be returned to the subdivider to reimburse the costs of *the installation of the facilities; such agreement* for reimbursement shall extend for a maximum period of five years from initial date of agreement after which time no further reimbursement shall be made to the subdivider. The city may also elect to reimburse the subdivider for such "off-site" facilities in full or in part after the subdivider has furnished the City with acceptable evidence that an agreed number of housing units are occupied. No interest shall accrue or become payable on such reimbursement. Engineering drawings showing benefitted property shall be prepared by the city engineer and copies forwarded to the sewer, water and streets departments of the City. (Ord. 97-18 §§ 1, 2, 1997; Ord. 391 Ch. 4 §3, 1974).**

In construing and applying a City ordinance to circumstances such as those presented by this case, the Supreme Court has established a guide for statutory interpretation. In *Friends of Farm To Market v. Valley County*, 137 Idaho 192, 197, 46 P.3d 914 (2002), the Court stated as follows:

> **We apply the same principals in construing municipal ordinances as we do in the construction of statutes. *Cunningham v. City of Twin Falls,* 125 Idaho 776, 779, 874 P.2d 587, 590 (Ct. App. 1994) (citing *State v. Roll,* 118 Idaho 936, 939 N.2, 801 P.2d 1287, 1290 n.2 (Ct. App. 1990). The objective in interpreting a statute or ordinance is to derive the intent of the legislative body that adopted the act. *Ada County v. Gibson, 126 Idaho 854, 856, 893 P.2d 801, 803* (Ct. App. 1995) (Citing *Ada County Assessor v. Roman Catholic Diocese of Boise,* 123 Idaho 425, 428, 849 P.2d 98, 101 (1993); *Cox v. Department of Insurance,* 121 Idaho 143, 146, 823 P.2d 177, 180 (Ct. App. 1991)). Any such analysis begins with the literal language of the enactment. Id. (citing *Matter of Permit No. 36-7200, 121 Idaho 819, 823, 828 P.2d 848, 852 (1992); Local 1494 of Intern. Ass'n of Firefighters v. City of Coeur d' Alene,* 99 Idaho 630, 639, 586 P.2d 1346, 1355 (1978); *Messenger v. Burns,* 86 Idaho 26, 29-30, 381 P.2d 913, 915 (1963)).**

A. THE INTENT OR PURPOSE OF THE CITY ORDINANCE WAS TO PROVIDE A METHOD OF REIMBURSEMENT TO A SUBDIVIDER WHO CONSTRUCTS "OFF-SITE" IMPROVEMENTS WHEN SUCH IMPROVEMENTS ARE REQUIRED BY THE CITY.

The clear intent of the City Ordinance cannot be mistaken, nor is it ambiguous. When Beckstead installed the 1700 feet of 12-inch pipe on 800 East in Preston as required by the City, he installed an "off-site" improvement which triggered the application of the ordinance. After installation of the pipeline in October of 2003, the fees collected for the next five years from any "benefitted intervening property owners" who connected to the

pipeline would have to be turned over to Beckstead as reimbursement for his costs incurred installing the pipeline.

> **Where the language is unambiguous, the clearly expressed intent of the legislative body must be given effect, and there is no occasion for a court to construe the language.**

Friends of Farm to Market, supra at 197.

A look at the literal language of the ordinance does not reveal an interpretation which would allow the City to deny its responsibilities under the ordinance.

The first sentence of the ordinance states:

> **Whenever any intervening property ("off-site") is benefitted by the installation of any of the required facilities, the subdivider may pay the cost of such facilities to the City, such cost to be determined by competitive bids solicited by the City, together with verified engineering costs required therefore.** (emphasis added)

The City claims Beckstead did not pay the cost of installing the pipeline to the City, however, the ordinance does not make this mandatory, hence the use of the word "may" in the first sentence. The City did not require Beckstead to obtain competitive bids and the City had its own City Engineer to oversee the project to the extent determined by the City. Again, the requirements of the first sentence of the ordinance are qualified by the word "may" which makes the sentence discretionary rather than mandatory. One provision of an ordinance may be mandatory and the other discretionary as determined by the use of the words "may" as opposed to "shall" or "will".

The second sentence of the ordinance is entirely different. It states:

> **The city shall thereafter enter a deferred credit in its books and records and shall charge the benefitted intervening property owners the fee rates for sewer and water connections in effect at the time such connections are made.** (emphasis added)

The use of the word "shall" entirely changes the character of this sentence of the ordinance. The City is mandated by this sentence to charge intervening property owners the fees in effect at the time and enter a credit on the books and records of the City for such charges.

The next sentence of the ordinance is equally mandatory.

> **Such fees shall then be returned to the subdivider to reimburse the costs of the installation of the facilities; such agreement for reimbursement shall extend for a maximum period of five years from initial date of agreement after which time no further reimbursement shall be made to the subdivider.** (emphasis added)

By this sentence, the City has no choice but to reimburse Beckstead for the costs of the installation of the pipeline and such costs are reimbursable for a period of five years. The City may argue that there was no "agreement" as mentioned in the ordinance. The City did not require a written agreement, nor was any proffered to Beckstead by the City. Further, the ordinance does not state a written agreement was required. It seems the City would try to escape the obligations imposed by its own ordinance through a technical smoke screen making some sort of written agreement necessary in order to avoid the reimbursement mandated by its own ordinance. What would the agreement say that the City would comply with its own ordinance? The confidence and trust which repose in a city

by its citizens would be violated if the city were to seek to escape the clearly stated intent of its own obligation towards its citizens.

The primary rule governing the construction and interpretation of an ordinance is to ascertain and determine the intent of the ordinance from the plain meaning of its words. The intent of the City ordinance plainly provides for reimbursement to Beckstead. No other interpretation can be made.

B. IF THE COURT DETERMINES ANY MATERIAL PART OF THE ORDINANCE IS AMBIGUOUS, IT MUST LOOK TO RULES OF CONSTRUCTION FOR GUIDANCE.

Although the ordinance in question does not seem to present an ambiguity that clouds its intent, however, should there be any question of ambiguity in its terms, the Court must look to rules of construction for guidance. *Ada County v. Gibson,* 126 Idaho 854, 856, 893 P.2d 801, 803 (App. 1995). If rules of construction are to be followed due to some perceived ambiguity,

> **"...The intent of the drafters may be ascertained by considering, first, the express language and, in addition, the context in which the language is used, the evils to be remedied and objects in view." (cite omitted)**

(Ada County, Supra, at 804)

If the intent of the drafters is to be derived from the express language of the City Ordinance, then such intent becomes crystal clear in its first phrase:

> **Whenever any intervening property ("off-site") is benefitted by the installation of any of the required facilities, ...**

This phrase does not allow for the City the discretion to avoid its responsibilities by making its own determination of what off-site improvements should be reimbursed and other off-site improvements that should not. The word "whenever" is all encompassing. There should be no question the off-site improvements paid for and installed by Beckstead benefitted intervening property owners who later made water connections to the new pipeline. The express language of this phrase cannot be interpreted any other way. The improvements made by Beckstead triggered the purpose and intent of the ordinance.

If the installation of the pipeline meets the express intent of the ordinance, then the court may then look to the context and object of the ordinance to clear up any possible ambiguities. Part of the ordinance states,

> **"...The subdivider may pay the costs of such facilities to the City, such costs to be determined by competitive bids solicited by the City, together with verified engineering costs required therefore."**

Use of the word "may" taken in the context of the ordinance makes the subsequent language discretionary and not mandatory. Further, no engineering costs were incurred and the City did not require Beckstead to go through a bidding process. The City knew Beckstead was paying for the project directly to vendors and did not object to this method of payment, in fact, the City gave its blessing to the procedure by reimbursing Beckstead for the upgrade to a larger pipe.

Finally, in choosing between alternative constructions of an ordinance, "Unnecessarily harsh consequences are to be avoided." (*Ada County*, supra, at 805). Because the City did not offer a written agreement or required competitive bids or payment for the improvements to be made directly to the City, the City would have the Court toss

out the requirement for reimbursement in the ordinance completely leaving Beckstead to bear the entire cost of the pipeline installed for the benefit of others. This would be an "unnecessarily harsh consequence."

The action of Beckstead, as a subdivider and the person who paid for and installed the ordinance, certainly comes within the context and object of the City's ordinance. The fact of the matter is the City wishes to escape the obligation of its own ordinance, despite the subdivider (Beckstead) having met the requirements and intent of the ordinance. Even though the City showed its dislike for the ordinance by its subsequent repeal, it cannot ignore the fact the ordinance was in place at the time the pipeline was installed and could be reasonably relied upon by persons to whom the ordinance applied.

III. BECKSTEAD HAS MET THE NOTICE REQUIREMENTS OF THE IDAHO TORT CLAIMS ACT.

The City may argue Beckstead's letter dated October 22, 2004 (Beckstead Affidavit, Ex. "F") does not meet the notice requirements of the Idaho Tort Claims Act (*Idaho Code* §6-901 et. seq.), (hereafter "ITCA") The Act requires notice be given of a claim against a governmental entity within 180 days "from the date the claim arose or reasonably should have been discovered, whichever is later." (*Idaho Code* §6-906) In his letter, Beckstead requests reimbursement for off-site improvements he made through the installation of a water line on 800 East in as much as he had become aware of water connections that had been made to the pipeline. He asked for an opportunity to meet with the City Council to discuss such reimbursement, however, the City Council chose to respond through its counsel with a letter denying the claim and rejecting his request. (Beckstead Affidavit, Ex.

"G") Later, when additional connections were discovered to have been made to the pipeline, another Notice of Claim was submitted by counsel for Beckstead. (See Notice of Claim attached to Affidavit of Beckstead).

Beckstead submits his letter of October 22, 2004 is adequate to place the City on notice of the nature and purpose of his claim. If the City was misled in any way or did not understand what Beckstead was claiming, then how was the City Attorney able to draft a detailed letter for the purpose of denying the claim. Furthermore, each and every connection made to the pipeline installed by Beckstead during the five-year period contemplated by the ordinance would constitute a new or ongoing claim for each such new connection made. In fact, Beckstead should have the full five years under the Ordinance to file his claim, since the language of the Ordinance grants that time period for reimbursement.

It is ironic the attack made by the City under the ITCA notice requirements for alleged deficiencies in the letter would have already been decided in another case in which the City was involved. In *Smith v. City of Preston*, 99 Idaho 618, 621-622, 586 P.2d 1062, 1065-1066 (1978) the Supreme Court reversed Judge Rasmussen following the District Court's dismissal of a tort claim on the basis the notice was defective. In *City of Preston*, supra, a letter was sent by an insurance company claiming reimbursement or subrogation following an automobile accident in which Mr. Smith was involved. Although the letter did not meet all of the particular requirements of *Idaho Code* §6-907 as a statement of his claim, the City's insurance carrier replied to the letter indicating that it was denying Smith's request. The Court stated:

Although the contents of the letter of October 8 does not comply with all of the requirements enumerated in §6-907, we believe the contents of the letter were adequate in light of the final proviso of that section which states, "(a) claim...shall not be held invalid or insufficient by reason of an inaccuracy in stating the time, place, nature or cause of the claim, or otherwise, unless it is shown that the governmental entity was in fact misled to its injury thereby.

(I.C. §6-907)

At the time summary judgment was entered in *City of Preston*, there was nothing in the record to suggest that the City was "misled to its injury" by any deficiencies in the contents of the letter. On the contrary, the reply by the City's insurance carrier indicates that the October 8 letter was sufficient to notify the City that a claim against it was being pursued and to apprise the City of sufficient facts for it to investigate the matter, determine its merits and prepare a defense.

How could the City claim to be misled by Beckstead's letter of October 22, 2004, when the City's denial of his request made it perfectly clear the City understood what Beckstead wanted and the nature of his claim. Even though a specific amount was not stated, he was not allowed to elaborate further by meeting with the City, since the City denied the claim in its entirety by letter.

The City has already indicated in correspondence to Beckstead's counsel it intends to rely on a case entitled *Magnuson Properties Partnership v. City of Coeur D'Alene*, 138 Idaho 166, 59 P.3d 971 (2002). In that case Magnuson believed he had a right to reimbursement for the extension of a sewer line from the City property to an adjoining parcel owned by a third party. Magnuson's contractor sent a letter to the City with a statement of reimbursable costs which the City subsequently denied. Magnuson then filed

a Notice of Claim against the City, which claim was determined by the District Court to be untimely. The Supreme Court upheld the District Court's decision stating the 180-day period for the filing of a tort claim notice began running on the day the City sent its letter of denial to Magnuson. However, the part of this case which is ignored by the City in the present claim is the statement in the opinion at 170 in which the Court says:

> **Arguably, Magnuson's May 10, 1996 letter asking for reimbursement was a notice of claim for purposes of the ITCA. However, because this argument was raised for the first time on appeal, this Court will not consider it.**

Justices Eismann and Walters in their concurring opinion elaborated further on the erroneous position taken by Magnuson:

> **Here the city denied the claim on August 13, 1996, some ninety-five days after May 10. The City's reason for rejecting the claim is irrelevant. At that point, in my opinion, Magnuson was free to file an action to collect on the rejected claim. Magnuson did not need to later send in a second claim addressing the same dispute when that claim had already been denied by operation of the terms of the pertinent statute and by the City's rejection in fact.**
>
> **However, Magnuson chose not to rely on the May 10 letter as a notice of claim. Instead, Magnuson continued to pursue discussions with the City in an attempt to receive reimbursement for it's projects costs. When Magnuson's attempts proved futile, Magnuson sent another demand notice in February, 1997, and then filed suit when that demand was rejected. As it turned out, of course, the February 1997 notice of claim was held untimely by the District Court upon the facts as presented and argued by the parties in this case.**
>
> **(...)**
>
> **Because Magnuson decided to proceed under its own interpretation of the steps to be followed without suggesting to the courts the correct alternative route, this Court is not required to reconstruct the case and put it on the proper tract.**

(Magnuson, supra at 171)

Beckstead certainly does not intend to make the same mistake Magnuson did in his presentation to this Court. Beckstead's position is that his letter of October 22, 2004 is sufficient under the statute to give notice of his claim and , in fact, did not mislead the City in any way as to the nature of his claim.

Whether or not Beckstead needed to file an additional claim for subsequent connections made to the pipeline is uncertain, but in an abundance of caution, such a claim was filed in order to preclude any technical notice arguments which might be raised by the City. Unlike in *Magnuson,* Beckstead has a period of five years in which he is entitled to reimbursement and the claims period has not yet run.

IV. FAILURE BY THE CITY TO REIMBURSE BECKSTEAD WOULD RESULT IN A WINDFALL TO THE CITY FOR WHICH BECKSTEAD SHOULD BE REIMBURSED UNDER THE THEORY OF UNJUST ENRICHMENT.

When the City imposed the requirement of installing the pipeline along 800 East in Preston, Beckstead did not refuse to do so even though it had been represented to him sufficient flow existed at the entrance to his subdivision. He understood a City ordinance existed which would allow him to be reimbursed as new water connections were made to the pipeline he was to install. Since the pipeline would provide no direct benefit to Beckstead, but would be of great benefit to intervening property owners making connections to the pipeline and would improve the City's water distribution system, he felt the City would honor its ordinance and under basic notions of fairness would reimburse him. As an alternative remedy for Beckstead, he should be allowed to recover for the installation of the pipeline under a theory of unjust enrichment.

The City has argued no written agreement was made between the parties requiring reimbursement. Although it is Beckstead's position no written agreement is necessary when an ordinance mandates the reimbursement of his costs, nevertheless, under the theory of unjust enrichment, no written agreement is necessary. Further, to allow the City to retain the benefit of the pipeline without compensating Beckstead would be inequitable and unjust. In *Stephens v. City of Notus*, 101 Idaho, 101, 102, 609 P.2d 168, 169, the Idaho Supreme Court upheld the district court's award of expenses a private developer incurred when he installed water and sewer systems at his own expense and the City benefitted from his action. The Court stated:

> **Although defendants argue that no written agreement was executed between the parties, unjust enrichment does not depend upon the existence of a valid contract. *Continental Forest Products v. Chandler,* 95 Idaho 739, 518 P.2d 1201 (1974). ...**
>
> **The essence of the quasi-contractural theory of unjust enrichment is that the defendant has received a benefit which would be inequitable to retain at least without compensating the Plaintiff to the extent that retention is unjust. *Chandler,* Supra; *Bair v. Barron*, 97 Idaho 26, 539 P.2d 578 (1975). *Cf. Bastian v. Gafford*, 98 Idaho, 324, 563, P.2d 48 (1977).**

It would be manifestly unjust to allow the City to retain the benefit it derived from Beckstead's installation of the pipeline.

V. BECKSTEAD SHOULD BE AWARDED HIS ATTORNEYS FEES AND COSTS PURSUANT TO *IDAHO CODE* §12-117.

Idaho Code §12-117 provides:

> **Unless otherwise provided by statute, in any administrative or judicial proceeding involving as adverse parties a state agency, a city, a county or other taxing district and a person, the court shall award the prevailing party reasonable attorneys fees, witness fees and reasonable expenses, if the court finds that the party against whom the judgment is rendered acted without a reasonable basis in fact or law.**

On a number of occasions, the Idaho Supreme Court has interpreted this statute to mean,

> **...One of the purposes of this section is to provide a remedy for persons who have borne unfair and unjustified financial burden attempting to correct mistakes agencies never should have made. *Bogner v. State Dep't of Revenue and Taxation,* 107 Idaho 854, 859, 693 P.2d 1056, 1061 (1984).**

Fischer v. City of Ketchum, 141 Idaho 349, 356, 109 P.3d 1091 (2005). See also *Friends to Farm to Market,* supra. at p. 17.

In this case, Beckstead has been required to bear the financial burden of paying for and installing the pipeline along 800 East in Preston without just reimbursement for no real reason other than the City did not want to pay him for the pipeline. The City obtained a great benefit from the installation of the pipeline in that it now has a 12-inch pipe looping the City's water system which has saved the City cost and expense which it would have had to pay if the pipeline had been installed by the City. It is fair and just that Beckstead be reimbursed for not only the costs of the pipeline but for being forced to hire counsel to enforce the City's own ordinance. The legal action brought by Beckstead is to correct the mistake or failure of the City to reimburse him, which mistake never should have been made.

SUMMARY

The reading of City Ordinance §16-28.030 can only be interpreted to show a clear intent to reimburse a subdivider for installing off-site improvements required by the City which benefits intervening property owners. It is difficult to imagine any other scenario in which this ordinance would be applicable if it is not held to apply in this case. If the court's duty is to ascertain the intent of the drafters of the ordinance from the plain language of the ordinance, then no other interpretation is reasonable. Once the Court has ascertained and determined the intent of the ordinance from the plain meaning of its words, then the application of the ordinance to the improvements made by Beckstead becomes mandatory.

The purpose of the City Ordinance, its aim, object and design was to provide for a method of reimbursement to a subdivider upon whom the City imposed a requirement to make improvements which would benefit others or would normally fall under the City's responsibility. It is not uncommon for cities, counties, utility companies or others to create such a rule or policy in order to promote development, while at the same time sharing the burden of the costs associated with extending pipelines, electrical lines or gas lines.

To allow the City to escape responsibility under its own ordinance for reimbursement of the pipeline in this case would amount to an unjust windfall to the City which now has 1,700 feet of new pipe to which others may connect to the City's water system without paying for the "off-site" improvement. It is respectfully submitted that the City be required to pay over to Beckstead those water connection fees collected up to the sum of $13,153.64 together with attorneys fees and costs incurred by Beckstead in pursuing this

action to correct a decision or course of action which the City should never have taken in the first place.

DATED this 21st day of June, 2007.

STEVEN R. FULLER
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing SECOND AMENDED COMPLAINT was served on the 21st day of June, 2007.

On:

By:

✓ MAIL, POSTAGE PRE-PAID

Clyde G. Nelson
Attorney at Law
P.O. Box 797
Soda Springs, ID 83276

_____ HAND DELIVERY

_____ TELEPHONE FACSIMILE
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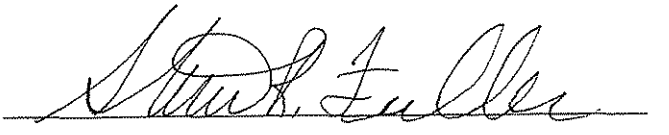

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IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

SCOTT BECKSTEAD REAL ESTATE, COMPANY, an Idaho Corporation, and Scott Beckstead, Individually

Plaintiff,

vs.

CITY OF PRESTON,

Defendant.

CASE NO. CV-2006-390

MEMORANDUM IN SUPPORT OF DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

NATURE OF THE CASE

Plaintiff (Beckstead) seeks payment from the Defendant (City) of $13,153.64 for connections made by third party property owners to the waterline installed by Beckstead on 800 East Street. Beckstead also seeks a Writ of Mandamas to compel the City to pay him sums collected, or to be collected, by the City for intervening connections in the sum as set forth above. Beckstead further seeks a Declaratory Judgment as to the interpretation of §16.28.030B, Preston Municipal Code. The City has asserted numerous defenses to include lack of agreement or contract between the parties, statute of frauds, failure of Beckstead to comply with the requirements of §16.28.030B, failure to file adequate or timely Notice of Claim with the City or to timely prosecute that claim, has denied unjust enrichment and has asserted that Beckstead will be unjustly enriched as well as other defenses set forth on pages 1 through 5 of its Answer.

STATEMENT OF FACTS

Beckstead submitted a preliminary plat to the City for approval in December, 2002, to be named Creamery Hollow Estates consisting of 22 lots. City ordinances required a 6-inch water line to serve the subdivision, and required the subdivider to construct a waterline from the city water main to the subdivision and pay for 100% of the cost of said waterline improvements. The City had the right to require "oversize" pipe, (pipe in excess of a six-inch diameter) but was required to reimburse the subdivider for the "oversizing" (Ord.391, Ch.4, §3, §§4-Exhibit A, Affidavit of Jerry Larsen).

The City approved the subdivision plat in July, 2003, subject to Beckstead's obligation to install the waterline from the city water main to the subdivision and also requiring Beckstead to "oversize" the line to a 12-inch diameter. Beckstead chose to install the connecting waterline on 800 East Street. (Affidavit of Darrell Wilburn). The 12-inch line was installed by Beckstead and completed in October, 2003. The line has been measured by the City to be 1,650 feet in length. (Affidavit of John Balls). Beckstead claims he has installed 1,700 feet. (Complaint). Of the 1,700 feet of 12-inch waterline allegedly installed, the City supplied 460 feet, and Beckstead supplied 1,240 feet. (Affidavit of Darrell Wilburn) The City calculated its reimbursement to Beckstead for the "oversizing" by subtracting the difference in cost of a 6-inch line from the cost of a 12-inch line for the same distance less the cost of the pipe supplied by the City. (Document prepared by Darrell Wilburn, City Engineer, and Scott Martin, Director of Public Works dated November 12, 2003, Exhibit A to Affidavit of Darrell Wilburn). Beckstead submitted a Claim Voucher for said sum of $7461.00 on December 16, 2003. (Exhibit B to Affidavit of Jerry Larsen) and was reimbursed by the City for the oversizing on December 17, 2003 (Exhibit C to Affidavit of Jerry Larsen). No agreement was ever entered into between Beckstead and the City for reimbursement to Beckstead for the construction of said waterline. (Affidavit of Jerry Larsen).

The waterline was installed on the west side of 8th East Street and adjoined some undeveloped property. Fees for four service connections of $2,500.00 each were paid to the City by Jessica Jensen on behalf of Ronald Owen, Terry Ordin, Dustin Jensen, and Dallas

Ward on September 29, 2004. Jerre Tewes paid for a connection on October 19, 2004. (Exhibit D, Affidavit of Jerry Larsen). The connections for the four service lines paid for by Jessica Jensen were installed by the City on October 12, 2004 and for Jerre Tewes on November 16, 2004. (Exhibit E, Affidavit of Jerry Larsen). No further connections have been made to the waterline constructed by Beckstead. (Affidavits of John Balls, Darrell Wilburn, and Jerry Larsen). The cost to the City for labor and materials for installation of a service connection in 2004 was $2,618.07 for each connection. A connection now costs the City $3,349.40. Actual service connection fees charged by the City for 2003 through the present remains at $2,500.00 per connection (Affidavit of Jerry Larsen).

On October 22, 2004, after all intervening connection fees had been paid and four of the five service line connections were made by the City, Beckstead sent a letter to the City citing §16.28.030B, Preston Municipal Code, (Ord.391, Ch.4, §3, (1) Exhibit A, Affidavit of Jerry Larsen). Said letter requested a meeting with the City to discuss the process of reimbursement for "off-site improvements" (waterline on 800 East) for the intervening connections to said waterline. Beckstead states in said letter: "I understand that several water connections have been made to that line." (Exhibit F, Affidavit of Jerry Larsen). A reply was sent by the City on November 16, 2004 through its attorney Clyde G. Nelson, denying Beckstead payment or reimbursement for the waterline. (Exhibit G, Affidavit of Jerry Larsen).

No further communications were made by Beckstead to the City until receipt by the City of a letter from Steve Fuller, his attorney, dated April 11, 2006, 17 months later. (Exhibit C to Second Amended Complaint) Mr. Fuller noted the City's denial of Beckstead's request dated November 16, 2004, but requested the City to "reconsider its position and provide for reimbursement". The City chose not to reconsider its position and informed Mr. Fuller of that fact by letter from Clyde G. Nelson dated May 24, 2006. (Exhibit H. Affidavit of Jerry Larsen).

On or about July 31, 2006, approximately 33 months after installing the waterline and 22 months after Beckstead's letter of October 24, 2004, Beckstead submitted a Notice of Claim to the City through his attorney. (Exhibit I to Affidavit of Jerry Larsen). The Claim referred to the installation of a 10-inch (not 12-inch) waterline along 1800 East Street (not 800 East Street). The Claim stated that water connection fees had been paid in 2004, 2005 and 2006. (Fees were only paid for connections made by the City in 2004. (Exhibit D,

Affidavit of Jerry Larsen). The claim was for $10,603.60.

On or about September 8, 2006, nearly three years after construction of the waterline, Beckstead filed a Complaint against the City for a sum allegedly owing him. ($10,603.60) The Complaint was never served upon the City. (Affidavit of Jerry Larsen) Thereafter, Beckstead filed his First Amended Complaint on or about December 8, 2006, claiming $10,603.60 and filed his Second Amended Complaint on or about May 15, 2007, claiming $13,153.64. The City has filed Answers to the First and Second Amended Complaints.

The City enacted Ordinance No. 461 on August 3, 1981 and Ordinance 2004-7 on December 13, 2004. (Exhibits J and K, Affidavit of Jerry Larsen). The City contends, among other defenses, that said Ordinances repealed that portion of Ordinance 391 codified as 16.28.030B.

Beckstead has sold all lots within the subdivision. (Exhibit A to Affidavit of Clyde G. Nelson) Beckstead admits that he made a profit from the sale of his lots within the subdivision after deducting the cost of the lots, and all improvements within the subdivision, including the waterline on 800 East Street. (Plaintiff's Supplemental Answer to Defendant's Interrogatories and Request for Production of Documents; Exhibit B to Affidavit of Clyde G. Nelson).

ARGUMENT

I.

SUMMARY JUDGMENT

Summary Judgment is proper when "the pleadings, depositions, and admissions on file, together with the Affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." I.R.C.P. 56(c) *Magnuson Properties v. Coeur D'Alene*, 138 Idaho 166, 169(2002). In a Motion for Summary Judgment, the court liberally construes all facts in favor of the nonmoving party and draws all reasonable inferences from the facts in favor of the nonmoving party. *Northwest Bec-Corp. V. Home Living Services*, 136 Idaho 835, 838-839(2002), *Magnuson Properties v Coeur D'Alene* (supra). It is appropriate for the court to issue judgment in this case based upon the City's Motion for Summary Judgment.

II.

ORDINANCE 16.28.030B

Beckstead's Complaint against the City relies solely upon Ord. No. 391, Ch.4, §3(a) codified as §16.28.030B. That Section read as follows:

> Whenever any intervening property ("off-site") is benefitted by the installation of any of the required facilities, the subdivider may pay the costs of such facilities to the city, such costs to be determined by competitive bids solicited by the city, together with verified engineering costs required therefore. The City shall thereafter enter a deferred credit in its books and records and shall charge the benefitted intervening property owners the fee rates for sewer and water connections in effect at the time such connections are made. Such fees shall then be returned to the subdivider to reimburse the costs of the installation of the facilities; such agreement for reimbursement shall extend for a maximum period of five years from initial date of agreement after which time no further reimbursement shall be made to the subdivider. The city may also elect to reimburse the subdivider for such "off-site" facilities in full or in part after the subdivider has furnished the City with acceptable evidence that an agreed number of housing units are occupied. No interest shall accrue or become payable on such reimbursement. Engineering drawings showing benefitted property shall be prepared by the city engineer and copies forwarded to the sewer, water and streets departments of the City. (Ord. 97-18 §1, 2, 1997; Ord. 391 Ch. 4 §§3, 1974).

The Section in question required the following for reimbursement to be made by the City to Beckstead:

1. Beckstead could initiate the provisions of this section by paying the cost of materials and installation to the City based upon the verification and bids prior to construction.
2. The costs for materials and labor for construction of the waterline had to be determined by competitive bids.
3. Engineering drawings were required to show the properties to be benefited by the construction of the waterline.
4. The parties had to enter into an agreement for reimbursement which would extend for five years from the initial date of the agreement.

In this case, Beckstead did not, either prior to or at the time of construction of the 800 East waterline, request reimbursement for materials and labor to construct the waterline. He did not request the City to engage in competitive bids for the materials and installation costs, did not pay the costs to the City as determined by competitive bidding, and did not enter into an agreement with the City for the installation of the waterline encompassing the costs, the method and amount of reimbursement, areas benefitted by the improvements, or the initial date of the contract from which the time period for reimbursement was to be determined. (Affidavit of Jerry Larsen.)

If Beckstead had paid the cost to the City for the construction and requested that the City competitively bid the same, the City could have calculated the benefit to all properties adjoining the waterline after engineering drawings were prepared showing the benefitted properties. Once the number of benefitted properties had been determined, the City would know the amount to be charged to an intervening connector in order to cover the costs to the City as well as to pay a portion of Beckstead's costs. An agreement would have been prepared to reflect the amount to be paid by each intervening connector in addition to that fee charged by the City for service connections and to set a date for commencement and termination of this obligation.

An analysis by the City of the benefitted properties prior to construction would have established the number of properties so benefitted and the amount to be charged for each additional connection to reimburse Beckstead.

Beckstead's Creamery Hollow Subdivision has 22 lots, all of which have been "benefitted" by construction of the waterline. For example, if Beckstead had complied with the Ordinance, and it were determined by the engineer's review that there were 50 properties which could have been benefitted, including Beckstead's subdivision lots, the agreement would have divided the $13,153.64 cost alleged by Beckstead for the construction between the 50 properties so benefitted charging 1/50 of the cost to each connection or $263.07 per connection. Beckstead would have been responsible for 22/50 of said costs. The remaining 28 possible connections would be responsible for the remaining costs if and when each parcel connected to the line within the five years set forth by the Ordinance and agreement.

It is nearly four years since construction of the waterline. Even by Beckstead's own argument, and as alleged in his complaint, he would not be entitled to any further contributions from intervening connectors beyond October 2008. At the present time, the

number of connections to the line by intervening connectors is five. The total number of connections, counting Becksteads subdivision, is 27 (22+5). If we were to just use these figures, Beckstead would have received 81.5% of the benefit of the improvements, and the intervening property owners to date would have received 18.5% benefit of the improvements. These five property owners have benefitted in the total sum of $2,343.42 or $486.68 per connection. Beckstead cannot claim the benefit of this Ordinance without submitting to the obligation to pay as a benefitted owner. At the very least, these figures illustrate the necessity of a written agreement between the City and Beckstead prior to the construction to establish a figure for each connection for which Beckstead would be compensated.

As Beckstead has failed to comply with the terms of the Ordinance, and as no written agreement was entered into between the City and Beckstead prior to this construction, Beckstead cannot seek enforcement of the Ordinance, and has no agreement with the City upon which to rely.

There is no duty or obligation of the City to reimburse Beckstead. Ord. 391, Ch. 4, §3, Subsection 4, requires the subdivider to pay 100% of the cost of all improvements. The Ordinance does not provide any right to Beckstead to require the City to pay a sum to him in the event that it fails to collect from intervening property owners. Beckstead cannot enforce reimbursement unless he first complies with the conditions precedent. Those conditions precedent are as set forth above. As Beckstead failed to do so, he cannot now ask for reimbursement.

III.

STATUTE OF FRAUDS

If Beckstead had complied with the terms of the Ordinance by paying the costs of installation to the City following competitive bids, his claim still fails. §9-505(1) I.C. reads as follows:

> 9-505. CERTAIN AGREEMENTS TO BE IN WRITING. In the following cases the agreement is invalid, unless the same or some note or memorandum thereof, be in writing and subscribed by the party charged, or by his agent. Evidence, therefore, of the agreement cannot be received without the writing or secondary evidence of its contents:
>
> 1. An agreement that by its terms is not to be performed within a year from the making thereof.

Not only does the Ordinance require a written agreement between the parties to establish verified competitive bid costs and payment of these costs to the City, the Ordinance also states that "...such agreement for reimbursement shall extend for a maximum period of five (5) years from initial date of agreement after which time no further reimbursement shall be made to the subdivider". As the alleged obligation to reimburse Beckstead would extend for a period longer than one year, any agreement between Beckstead and the City is invalid as it is not in writing or subscribed to by the parties, and thus contravenes §9-505,I.C.

IV.

§ 50-219, CH.9, TITLE 6, IDAHO CODE

A. Letter of October 22, 2004 and Notice of Claim of July 31, 2006 - Time For Filing. Beckstead asserts in his Complaint that he learned of connections being made to the waterline in October, 2004. He then submitted his letter of October 22, 2004 to the City (¶10-Complaint, Exhibit F to Affidavit of Jerry Larsen) stating he was aware "...that several water connections have been made to that line." and requesting a meeting with the city to "discuss the process of such reimbursement". This request was denied by the City through Clyde Nelson's letter of November 16, 2004 (Exhibit G, Affidavit of Jerry Larsen; ¶11, Complaint). There was no further communication from Beckstead until receipt of his attorney's letter to the City dated April 11, 2006 (¶12-Complaint) requesting reconsideration of that denial, which reconsideration was denied by the City on May 8, 2006 and communicated to Beckstead's counsel by letter dated May 24, 2006 (Exhibit H, Affidavit of Jerry Larsen). The Notice of Claim was first filed by Beckstead on July 31, 2006 (¶29-Complaint; Exhibit I to Affidavit of Jerry Larsen).

§50-219, I.C. reads as follows:

> 50-219. DAMAGE CLAIMS. All claims for damages against a city must be filed as prescribed by Chapter 9, Title 6, Idaho Code.

The Supreme Court has ruled that all claims against governmental entities, whether grounded in tort, contract, or otherwise, must be filed in accordance with Chapter 9, Title 6, I.C. *Magnuson Properties v. Coeur D'Alene*, 138 Idaho 166, 169-170(2002). The definition of a "claim" §6-902(7), the time limitation for presenting claims of 180 days, §6-906; the required contents of a claim, §6-907; the restriction on allowance of causes of action if a claim is not filed, §6-908; and the limitation on actions after a claim arises, §6-911 are all applicable.

The definition of a "claim" is set forth in §6-902(7):

> "Claim" means any written demand to recover money damages from a governmental entity or its employee which any person is legally entitled to recover under this act as compensation for the negligent or otherwise wrongful act or omission of a governmental entity or its employee when acting within the course or scope of his employment.

The time for filing a claim with a governmental entity is set forth in §6-906:

> 6-906. FILING CLAIMS AGAINST POLITICAL SUBDIVISION OR EMPLOYEE -- TIME. All claims against a political subdivision [subdivision] arising under the provisions of this act and all claims against an employee of a political subdivision for any act or omission of the employee within the course or scope of his employment shall be presented to and filed with the clerk or secretary of the political subdivision within one hundred eighty (180) days from the date the claim arose or reasonably should have been discovered, whichever is later.

The requirements for the contents of a claim are prescribed in §6-907:

> 6-907. CONTENTS OF CLAIMS -- FILING BY AGENT OR ATTORNEY -- EFFECT OF INACCURACIES. All claims presented to and filed with a governmental entity shall accurately describe the conduct and circumstances which brought about the injury or damage, describe the injury or damage, state the time and place the injury or damage occurred, state the names of all persons involved, if known, and shall contain the amount of damages claimed, together with a statement of the actual residence of the claimant at the time of presenting and filing the claim and for a period of six (6) months immediately prior to the time the claim arose. If the claimant is incapacitated from presenting and filing his claim within the time prescribed or if the claimant is a minor or if the claimant is a nonresident of the state and is absent during the time within which his claim is required to be filed, the claim may be presented and filed on behalf of the claimant by any relative, attorney or agent representing the claimant. A claim filed under the provisions of this section shall not be held invalid or insufficient by reason of an inaccuracy in stating the time, place, nature or cause of the claim, or otherwise, unless it is shown that the governmental entity was in fact misled to its injury thereby.

A "claim" is a written demand to recover money damages. §6-902(7). No claim or action is permitted against a governmental entity unless presented to the city and filed within 180 days after the claim arose or reasonable should have been discovered. §6-906, §6-908 I.C. The time for filing a Complaint against a governmental entity is two (2) years after the date the claim arose or reasonably should have been discovered. §6-911 I.C. Of course, a Complaint cannot be filed unless the party has filed a Notice of Claim with the city pursuant to §6-906, I.C.

Beckstead purchased and installed 1,240 (or 1,190 feet)feet of waterline, and the 460 feet of line provided by the City. He received billings at the time of installation from his contractor and material providers. Copies of invoices from Irrigation Aid Co. and WR White Supply for pipe totaling 1,240 feet, and an invoice from Gary's Backhoe Service for excavation work were received by Beckstead on or about the time that he completed the construction project. (Copies of said invoices received in Plaintiff's Response to Defendant's Request for Discovery are attached to and made a part of the Affidavit of Clyde Nelson as Exhibit "C"). Beckstead was aware of the costs of his improvements and labor when he completed his construction in October, 2003. His cause of action, if any, arose at that time. As he was aware of the amount he alleges should have been reimbursed to him from future connections to the line at that time, he was required to make a claim against the City. The court stated in *Mitchell v. Bingham Memorial Hospital*, 130 Idaho 420, 423 (1997):

> This Court has held that "[k]nowledge of facts which would put a reasonably prudent person on inquiry is the equivalent to knowledge of the wrongful act and will start the running of the [180 days]." *McQuillen v. City of Ammon,* 113 Idaho 719, 722, 747 P.2d 741, 744 (1987). The Court has further held that the statutory period begins to run from the occurrence of the wrongful act even if the full extent of damages is not known at that time. Id. See also Ralphs v. City of Spirit Lake,98 Idaho 225, 227, 560 P.2d 1315, 1317 (1977). In a recent case, the Court of Appeals clarified the amount of knowledge required to begin the notice period: "The statute does not begin running when a person fully understands the mechanism of the injury and the government's role, but rather when he or she is aware of such facts that would cause a reasonably prudent person to inquire further into the circumstances surrounding the incident." *Mallory v. City of Montpelier,* 126 Idaho 446, 448, 885 P.2d 1162, 1164 (Ct.App.1994). The claimant in *Mallory* had argued that the notice period should not start running until she knew the exact cause of her injury. The Court of Appeals held that "such an interpretation would allow a party to delay completion of an investigation for months or even years before submitting a notice under the [ITCA]." 126 Idaho at 449, 885 P.2d at 1165.

Nevertheless, Beckstead presented no claim prepared in accordance with §6-907 until July 31, 2006 (Exhibit I, Affidavit of Jerry Larsen) nearly 34 months later. The claim was not filed within the 180 day period, and his Complaint must be dismissed pursuant to §6-906 and §6-908, Idaho Code.

There have been only five connections to the waterline by intervening third parties since Beckstead constructed the waterline. Four of these connections were made on October 12, 2004 and one on November 16, 2004. No connection has been made since that time.

(Affidavit of Jerry Larsen). Beckstead was aware of these connections as evidenced by his letter of October 22, 2004 to the City (¶10-Complaint, Exhibit F, Affidavit of Jerry Larsen) wherein he refers to the "several water connections" having been made for which he sought his meeting to discuss reimbursement. His request was denied by the City on November 16, 2004 by letter of Clyde Nelson, City Attorney. (Exhibit G, Affidavit of Jerry Larsen). If the date of completion of the project was not the date the "claim arose or reasonably should have been discovered" and the City's response of November 16, 2004 is deemed to be the "wrongful act" complained of, the Notice of Claim presented by Beckstead's counsel was not filed with the City until 22 months later. In either scenario, Beckstead has not met the requirements of §6-906 requiring him to file a Notice of Claim with the City within 180 days after the claim arose or should have been discovered. At the very least, Beckstead was aware on November 16, 2004, that his request for reimbursement was denied. Beckstead's Complaint is for payment of those funds by the City to Beckstead. Thus, Beckstead was required to file a Notice of Claim, if not within 180 days after October, 2003, then at the very least within 180 days after November 16, 2004.

In *Magnuson Properties v. Coeur D'Alene*, 138 Idaho 166, 169-170(2002), Supra, the court addressed a situation similar to, if not exactly on point, to the question presented in this case. Magnuson was the owner of undeveloped property it wished to develop. As part of the approval of the subdivision on this property, the city required Magnuson to extend a sewer line from its property to an adjoining parcel owned by a third party. Magnuson objected because of the increased cost to it. Magnuson stated that a city engineer had advised its representatives that the city would reimburse Magnuson for the additional cost to Magnuson as a result of the extension of the sewer line. Magnuson stated that it relied upon this representation to extend the line. On May 10, 1996, at Magnuson's direction, the general contractor submitted a statement of reimbursable costs to the city. The contractor itemized the extra costs attributable to the extension and requested the city pay Magnuson that amount. The city responded to this request on August 13, 1996, denying the existence of any agreement between the city and Magnuson and denying the request for reimbursement. The city acknowledged its policy of requiring property owners to extend sewer lines to the farthest boundary of the property when installing a sewer line. However, the city's policy was to only reimburse property owners for costs associated with enlarging the size of sewer pipe and deeper excavation. Magnuson made repeated attempts to discuss the request for

reimbursement with the city. The city met with Magnuson on November 7, 1996 and reiterated its denial of Magnuson's claim for reimbursement. Magnuson paid his contractor the sum requested to be reimbursed by the city on November 11, 1996, and filed a Notice of Claim against the city on February 18, 1997. Magnuson filed suit on October 16, 1998. The city filed a Motion for Summary Judgment on the ground that Magnuson's claim was barred by §50-219 and §6-906, Idaho Code, and the District court granted Summary Judgment in favor of the city. This decision was appealed, and the Supreme Court upheld the decision of the District Court. The court held:

> A. **The Time For Filing Notice Of A Claim Under I.C. §§ 50-219 And 6-906 Began To Run When Magnuson Received The City's August 13, 1996 Letter Of Denial.**
>
> I.C. §§ 50-219 (2000) requires filing any claim for damages against a government entity as required by the ITCA. IDAHO CODE §§ 6-901 (2000). A claimant has one hundred eighty (180) days from the day they knew, or should have known, of the claim to provide notice of the claim to the government entity. IDAHO CODE §§ 6-906 (2000). This notice requirement applies equally to tort claims and claims for breach of contract. *Enterprise, Inc. v. Nampa City*, 96 Idaho 734, 737-38, 536 P.2d 729, 732-33 (1975); IDAHO CODE §§50-219 and 6-906 (2002).
>
> The 180-day notice period begins to run at the occurrence of a wrongful act, even if the extent of damages is not known or is unpredictable at the time. *Ralphs v. City of Spirit Lake*, 98 Idaho 225, 227, 560 P.2d 1315, 1317 (1977). "Knowledge of facts which would put a reasonably prudent person on inquiry," triggers the 180-day period. *McQuillen v. City of Ammon*, 113 Idaho 719, 722, 747 P.2d 741, 744 (1987). Compliance with the notice requirement is a "mandatory condition precedent to bringing suit [against a city], the failure of which is fatal to a claim, no matter how legitimate." *Id.* A claimant is not required to know all the facts and details of a claim because such a prerequisite would allow a claimant to delay completion of their investigation before triggering the notice requirement. *Mitchell v. Bingham Memorial Hosp.*, 130 Idaho 420, 423, 942 P.2d 544, 547 (1997).
>
> The record reflects that, at the very latest, Magnuson had knowledge of the City's August 13, 1996 letter on August 15, 1996, which places Magnuson's February 18, 1997 notice beyond the 180-day period. The City's letter denies the existence of any agreement between the City and Magnuson and rejects Magnuson's request for reimbursement. As of August 15, 1996, a reasonable and prudent person would have knowledge of facts of a wrongful act, i.e., the City's denial of and/or breach of the alleged contract. Therefore, the 180-day notice period began on August 15, 1996, and Magnuson failed to provide timely notice

of its claim. 138 Idaho at 169-170.

The court in *Farber v. State*, 102 Idaho 398 (1981) and again in *C&G, Inc. v. Canyon Highway District No.4*, 139 Idaho 140 (2003) found that the date a construction project was completed triggers the notice requirement of §6-906 I.C. As Beckstead completed his construction of the 800 East waterline in October, 2003, he was required to file a Notice of Claim no later than April, 2004.

As Beckstead also failed to file a Notice of Claim within 180 days either upon completion of the project or after his claim for reimbursement was denied, his Complaint should be denied and Summary Judgment granted in favor of the City.

B. October 22, 2004 Letter. In Paragraph 10, Complaint, Beckstead argues that he made a claim to the City for reimbursement for his "off-site" improvements. This is the letter of October 22, 2004. (Exhibit F to Affidavit of Jerry Larsen). This letter did not make a claim, as required by §6-902(7), I.C., but merely requested a meeting with the City to discuss the process for reimbursement. No "demand" or "claim" for payment was made. No amount of "damages" was set forth. Although Beckstead attempts to assert that this is a claim, if it were so, it was not raised within 180 days of the time of completion of the project when Beckstead was fully aware of all costs for labor and materials for the project. As it was not filed within 180 days from the date the claim arose or reasonably have been discovered, Beckstead's cause of action against the City must be denied and Summary Judgment granted in favor of the City.

Furthermore, Beckstead's letter of October 22, 2004, does not satisfy the requirements of §6-907, Idaho Code. This section requires the following:

1. Claims are to be presented and filed with the governmental entity.
2. The claims must accurately describe the conduct and circumstances which brought about the injury or damage.
3. The claim must describe the injury or damage.
4. The claim must state the time and place the injury or damage occurred.
5. The claim must state the names of all persons involved.
6. The statement must contain the amount of damages claimed.
7. The claim must state the actual residence of the claimant at the time of presenting and filing the claim and for a period of six months prior to the time the claim arose.

Beckstead's letter of October 22, 2004 fails to meet the requirements of §6-907. It is

not a "demand" or "claim" as defined by Section 6-902(7). It merely requests a meeting to discuss the process of reimbursement. It does not describe the conduct and circumstances, giving rise to the claim, the materials which he purchased, or the labor that he may have performed or contracted for in installation of the line. It does not refer to, other than in general terms, the connections which have been made which would justify a reimbursement. It does not state when and where injuries or damages occurred or even refer to the dates and places that Beckstead furnished labor and materials or to the connections which were made which would justify reimbursement. It does not set forth the amount of damages claimed or the amount for which he seeks reimbursement. It does not set forth the actual residence of the claimant at the time of presenting and filing the claim.

The court has addressed the requirements for a proper claim and the inadequate provisions of certain claims which render a claim invalid. In *Foster v. Kootena Medical Center*, 2006 Idaho 32473 Plaintiff's attorney submitted a letter to the Idaho State Board of Medicine (ISBM) of medical malpractice against a doctor performing an operation at the county medical center. The hospital received that correspondence from ISBM. The District Court found that the Plaintiff had never filed a formal Notice of Tort Claim with the county, and that even assuming that the letter did constitute notice, the fact that it omitted a statement of damages rendered it inadequate under §6-907. The Supreme Court found that no claim had been submitted to the hospital pursuant to §6-906 I.C.

In *BHA Investments, Inc. v. City of Boise*, 141 Idaho 168 Bravo submitted a claim to the city setting forth the amount of damages but failing to mention another party "Splitting Kings". The court ruled that this Notice of Claim was untimely. Bravo and Splitting Kings then elected to rely upon a Notice of Claim filed by BHA. However that claim failed to mention the names of Bravo and Splitting Kings. The court ruled that because the Notice of Claim filed by BHA did not include the names and addresses of either Bravo or Splitting Kings, it was not sufficient under §6-907 and said claims were barred under state law.

In *Mitchell v. Bingham Memorial Hospital*, 130 Idaho 420(1997), the Plaintiff was overdosed by the hospital. This resulted in injury to her. Plaintiff's attorney spoke with the hospital administrator about the Plaintiff's claim prior to the expiration of the 180 day notice period required under §6-906, I.C. He also submitted copies of documents to the hospital that identified the Plaintiffs, the hospitalization and charges at issue, and their damages as

known at that time. However, due to negotiations between the hospital and Plaintiff's attorney, the Plaintiff failed to file a Notice of Claim pursuant to §6-906, I.C. within 180 days. The Plaintiff attempted to assert that his two phone conversations with the hospital and his submission of documentation referred to above to the hospital constituted a valid claim under §6-907 I.C. The court ruled oral communications made by the Plaintiff, or her attorney, did not constitute the filing of a claim as it is required by §6-902(7) and §6-907, I.C. The court stated that the conversations and the submission of the documentation did not preclude the requirement for a Plaintiff to file a formal claim with a governmental entity.

The court has also stated in *McQuillen v. City of Ammon*, 113 Idaho 719(1897) that actual knowledge or notice given to a governmental entity does not excuse a Plaintiff from filing a formal written claim. There the court stated:

> Further, in actions against governmental entities, plaintiffs are not exempt from the notice of claim requirements because of substantial actual notice having been given. *Independent School Dist. of Boise City v. Callister*, 97 Idaho 59, 539 P.2d 987 (1975), disapproved on other grounds, *Larson v. Emmett Joint School Dist. No. 221*, 99 Idaho 120, 577 P.2d 1168 (1978). *Calkins v. Fruitland*, 97 Idaho 263, 543 P.2d 166 (1975). *See also Newlan v. State, supra.* 113 Idaho 719, Page 722.

In *Thompson v. City of Idaho Falls*, 126 Idaho 587 (1994), a city employee was discharged from employment. She filed a Notice of Claim against another employee of the city for interference with contract. The court ruled she had not described the conduct and circumstances which brought about the alleged injury or complied with the other specifications of I.C. §6-907 regarding that claim. Therefore, the court found that the Notice of Claim was insufficient under §6-907 I.C.

In *Wickstrom v. North Idaho College*, 111 Idaho 450(1986) the Plaintiffs attended a course at the college and successfully completed the same. They sued the college for damages upon discovery that they were not qualified as entry level journeymen after successful completion of the course, contrary to a statement made in a school bulletin. Prior to suing the college, the Plaintiffs' attorney sent a letter to the college detailing the Plaintiffs' dissatisfaction with the course and their intent to take legal action if the college did not compensate them for sacrifices made in attending the course for 11 months. The letter failed to state Plaintiffs' names and addresses, the amount of any damages they had incurred, and the nature of any injuries suffered. The trial court held that the Idaho Tort Claims Act applied and that its notice provision (I.C. §6-907) had not been complied with. It granted

Summary Judgment on behalf of the college. The Plaintiffs appealed. The court after quoting §6-907 held in favor of the college stating:

> The demand letter of August 21, 1984 failed to serve as notice of a claim pursuant to the I.T.C.A., since it failed to state the names and addresses of the claimants, the amounts of claimed damages and the nature of the injury claimed. The claim is, therefore, barred. I.C. §§ 6-907; (Citation omitted)

C. **City Misled to its Injury by Improper and Untimely Notice**. If Beckstead's letter of October 22, 2004 were to constitute a valid claim under §6-907, it still was not timely submitted under §6-906. Beckstead was fully aware of his costs in the improvements as of October-November, 2003. He was also aware of the Ordinance which would permit recovery, but failed to file his notice within 180 days. As a result of said failure to timely file the claim, the City was misled to its injury by failure to provide notice.

The fees for all subsequent connections by intervening third parties were paid to the City prior to Beckstead's letter of October 22, 2004. (Exhibit D to Affidavit of Jerry Larsen). The City was unaware Beckstead claimed that he was entitled to reimbursement pursuant to the Ordinance until the fees had already been paid by the third parties and the connections made. If Beckstead had made a timely claim prior to the fees being paid, or asserted that he was entitled to future payment of fees paid, or that an agreement existed between the City and Beckstead for reimbursement, or that the Ordinance imposed some type of duty upon the City to reimburse, the City could have taken appropriate measures to draft an agreement between the City and Beckstead and ensure that sufficient monies were collected from the third parties requesting connection to the line with which to reimburse Beckstead, or at least postpone the payment of fees until it had been determined whether the City did or did not have a duty to collect fees on behalf of Beckstead. If it had been determined that the City had to reimburse, or the City decided that it had this duty, then the City could have established a fee for third party connectors which would cover Beckstead's expenses, as well as the City's.

V.

UNJUST ENRICHMENT

Beckstead has also raised an issue of unjust enrichment alleging that the City of Preston has collected connection fees from new users who have connected to the waterline installed by Beckstead and further alleging that the City has retained all of the water connection fees without reimbursing Beckstead for the labor and costs he incurred. Beckstead goes on to state that if the City were allowed to retain the water connection fees without reimbursing Beckstead, the City of Preston would be unjustly enriched. This issue

was never raised either in Beckstead's letter of October 22, 2004 or his Notice of Claim of July 31, 2006.

First, the City only charges the cost it incurs for a connection to a waterline. It makes no profit. Second, Beckstead also benefitted from the construction of the waterline in that he had 22 lots receiving water from this line and 22 of the total 27 connections which have been made. (See Section II, pp.6-7 of this Memorandum). Third, Beckstead has sold all lots within the subdivision , and after deduction of all costs, including purchase of the lots, improvements, and construction of the 800 East waterline, has made a profit. (See Plaintiff's Answer and Supplemental Answer to Defendant's Interrogatories and Request for Production of Documents-Affidavit of Clyde G. Nelson). The City is not unjustly enriched, but Beckstead would be if the court ordered the City to pay him. He has received 81.5% of the benefits of the improvements and has made a profit from his subdivision. §16.28.030B allows for "reimbursement" to the subdivider not enriching him to the detriment of others. Where Beckstead received the vast majority of the benefits of the waterline and has received full reimbursement for the line from his sales, he truly would be unjustly enriched if he were to receive additional funds from the City. He is only entitled to "reimbursement" not a windfall.

In *Magnuson Properties v. Coeur D'Alene*, supra, Magnuson argued that the Tort Claims Act (Ch.9, Title 6) notice requirement did not apply to its equitable claims. The court refused to consider that contention as it had been raised for the first time on appeal. Nevertheless, the court stated as follows:

> Even if Magnuson had properly raised the issue, this Court has construed I.C. §50-219 to require a claimant to file notice of all claims for damages against a government entity, tort or otherwise, as directed by the ICA. 138 Idaho at 170, citing *Seizer v. Dean*, 118 Idaho 568, 572(1990), the court in Seizer stated:
>
> "We therefore construe the language contained in I.C. §50-219 to require that a claimant must file a Notice of Claim for all damage claims, tort or otherwise, as directed by the filing procedure set forth in I.C. §6-906 of the Idaho Tort Claims Act, chap.9, tit.6. 118 568 at 572;

Beckstead failed to claim unjust enrichment by his letter of October 22, 2004 or his Notice of Claim of July 31, 2006. Thus, his complaint on this basis should be denied.

VI.

REPEAL OF SECTION 16.28.030B, PRESTON MUNICIPAL CODE

On August 3, 1981, the city enacted Ordinance No. 461 (Exhibit J to Affidavit of

Jerry Larsen). This Ordinance provided for the reimbursement of a person who constructed a water or sewer line at his own expense which benefitted other property owners and set forth a detailed procedure that had to be followed in order to comply. However, §8 of said Ordinance exempted subdividers as follows:

> Section 8. This ordinance shall not apply to subdividers of property within the City, and a subdivider shall construct all water and sewer lines at his own cost and expense in accordance with the subdivision ordinance of the City as well as any other applicable ordinances or regulations of the City.

Furthermore, §12 of said Ordinance states:

> Section 12. All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed, and this ordinance shall be in full force and effect from and after its passage and publication according to law.

Thus, §8 Required a subdivider to pay the cost of 100% of his improvements and §12 repealed any conflicting Ordinance. §16.28-030B was enacted by the City in 1974 as part of the Subdivision Ordinance. (Affidavit of Jerry Larsen). It permitted reimbursement to a subdivider if the subdivider complied with certain conditions. §8, Ord. No. 461 stated that a subdivider shall "construct all water and sewer lines at his own cost and expense". §12 states that provisions of prior ordinances conflicting with Ordinance No. 461 are repealed. Thus, Ordinance 461 repeals §16.28.030B, and Beckstead has no claim pursuant to said section.

In addition thereto, Ordinance No. 2004-7 was enacted by the City on December 13, 2004. (Exhibit K, Affidavit of Jerry Larsen) this action also addressed §16.28.030B, specifically repealing the same.

Beckstead's Notice of Claim against the City was filed on July 31, 2006, 18 months after the repeal of §16.28.030B by Ordinance 2004-7 long after the City had received its fees from intervening connectors in September, 2004. Beckstead's right of recovery, if any, of said fees collected by the City has been terminated pursuant to this Ordinance.

CONCLUSION

Summary Judgment is proper in favor of the City as against Beckstead. Beckstead relies upon §16.28.030B, Preston Municipal Code, Beckstead failed to comply with the terms of the Ordinance in order to initiate the same by paying money to the City for the cost of all improvements, obtaining competitive bids, and assisting upon an agreement with the City for reimbursement by future intervening connectors. Failure to insist on such an

agreement, and to comply with the terms of the Ordinance, excuses the City from compliance with the same. A written agreement between the parties establishing the cost of construction, the intervening properties benefitted thereby, and the amount of benefit received by Beckstead and his 22 lots connected to the line was necessary to comply with the Ordinance and to establish a contract between the parties. The contract had to be in writing as the statute envisions it being performed over a period of five years.

Beckstead has failed to comply with §50-219, Idaho Code, and Ch. 9, Tit. 6, Idaho Code. Beckstead was fully aware of the costs of his construction in October, 2003. His first correspondence with the City concerning reimbursement and wishing to meet with the City to establish some kind of procedure for reimbursement was not made to the City until his letter of October 22, 2004, one year later. The letter, was not timely filed, did not contain the necessary information as required by §6-907, I.C., and made no demand for reimbursement.

Wishing to rectify this situation, Beckstead's attorney filed a Notice of Claim on July 31, 2006. Beckstead's Complaint asserts that he became aware of additional connections after the October connection. Four of the five intervening connections were made prior to Beckstead's letter of October 22, 2004. The last connection was made in November, 2004. The claim was not timely filed pursuant §6-906. Beckstead's letter of October 22, 2004, fails to state any damages which he has suffered. The Notice of Claim filed on July 31, 2006, incorrectly states the amount of damages as being approximately $10,000.00 and alleges that he should be reimbursed for work performed on 1800 East. It also refers to water connections made and connection fees received by the City in 2004, 2005, and 2006. No fees were received after Beckstead's letter of October 22, 2004, and only one connection was made after that date, approximately two weeks later. Beckstead's claim must be limited to the amount set forth in the Notice of Claim of $10, 603.60.

Beckstead claims unjust enrichment, but in fact, he would be the party that is unjustly enriched if he were to recover any sums as against the City of Preston. His lots constitute 81.5% of the properties receiving connections from the waterline. Furthermore, he has received full reimbursement from his sales of the lots and has made a profit. Pursuant to §16.28.030B, he is only entitled to reimbursement, he is not entitled to a windfall.

§16.28.030B, Preston Municipal Code has been repealed by Ordinance No. 461 and Ordinance No. 2004-7. Consequently, Beckstead is not entitled to recovery as against the City.

It is respectfully requested that Summary Judgment be issued against Beckstead in favor of the City.

Dated this 20 day of June, 2007.

CLYDE G. NELSON

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Defendant's Answer to Plaintiff's Second Amended Complaint was served by first class mail, postage prepaid on this 20 day of June, 2007.

Steven R. Fuller
Attorney at Law
24 North State
Preston, ID 83263
Facsimile: (208) 852-2683

[x] U.S. Mail
[ ] Facsimile
[ ] Hand Delivered

Clyde G. Nelson

CLYDE G. NELSON
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Soda Springs, ID 83276
Telephone: (208) 547-2135
Facsimile: (208) 547-2136
Idaho State Bar No. 1197

Attorney for Defendant

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

SCOTT BECKSTEAD REAL ESTATE, COMPANY, an Idaho Corporation, and Scott Beckstead, Individually Plaintiff, vs. CITY OF PRESTON, Defendant.	CASE NO. CV-2006-390 AFFIDAVIT OF JERRY C. LARSEN IN SUPPORT OF DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

COMES NOW Jerry C. Larsen, upon oath duly deposes and says:

1. I am the City Clerk for the City of Preston, Idaho, and have served in that capacity since 1996. I am the custodian of the records of the City of Preston, Idaho.

2. All Exhibits attached hereto are true and correct copies of those on file with the City.

3. I know Scott Beckstead, and I am fully familiar with the Creamery Hollow Subdivision, and the waterline improvements constructed by Beckstead on 800 East Street in Preston, Idaho.

4. These improvements consisted of a 12-inch waterline (upgraded from a 6-inch line) in order to connect Beckstead's subdivision to the city water main.

5. The Creamery Hollow Subdivision has 22 lots receiving service from the waterline constructed by Beckstead. The subdivision is recorded in the office of the County Recorder of Franklin County, Idaho, under Instrument No. 223146. The subdivision was approved in July, 2003.

6. Beckstead was required to "oversize" the waterline from 6-inch to 12-inch pursuant to Ordinance No. 391, Ordinances of the City of Preston, Idaho. A copy of Chapter 4 of said Ordinance pertaining to required improvements by a subdivider is attached hereto as Exhibit "A".

7. Pursuant to Ordinance No. 391, the City was required to reimburse Beckstead for the "oversizing". This amount was computed by Darrell Wilburn and Scott Martin at $7,461.00. (Exhibit A to Affidavit of Darrell Wilburn)

8. On December 16, 2003 Beckstead submitted a Claim Voucher for the sum of $7,461.00 for the oversizing (Exhibit "B" hereto). He was reimbursed by the City for the oversizing on December 17, 2003 (Exhibit "C" hereto).

9. Never, during the platting of the subdivision, construction of the subdivision, or thereafter, did Beckstead ever discuss with the City at a City Council meeting, which I attend, or with me personally, reimbursement for intervening connections to the waterline by third party property owners. Prior to October 22, 2004, Beckstead did not mention reimbursement to the City. No written or oral agreement exists between the City of Preston and Beckstead for reimbursement or payment to Beckstead for intervening connections to the waterline. No monies were paid by Beckstead to the City for the construction. No competitive bids were conducted by the City or Beckstead for the materials and labor to construct the waterline. No engineering drawings were prepared to show properties to be benefitted by the construction of the waterline.

10. Beckstead completed his waterline improvements in October, 2003. Since that date, there have been five connections to the waterline from intervening third party property owners. Fees for four service connections of $2,500.00 each were paid to the City by Jessica Jensen on behalf of Ronald Owen, Terry Ordin, Dustin Jensen, and Dallas Ward on September 29, 2004. Jerry Tewes paid for a connection on October 19, 2004. A summary of the water connections paid by the intervening owners and dates of payment is attached hereto as Exhibit "D".

11. Connections for the four service lines paid for by Jessica Jensen were installed by the City on October 12, 2004 and for Jerry Tewes on November 16, 2004. (Water Service Order; Exhibit "E" hereto) No further connections have been made to the waterline constructed by Beckstead.

12. The amount charged by the City per connection was $2,500.00. The cost to the City for labor, materials, and administrative services and equipment in 2004 averaged $2,618.07. A connection fee now averages $3,349.00. (See Exhibit "B" to Affidavit of Darrell Wilburn.)

13. On or about October 22, 2004, the City received a letter from Scott Beckstead requesting to meet with the City to discuss the process of reimbursement for these connections to the waterline constructed by him. In said letter, Beckstead states that he was aware that several water connections had been made to the line. (Exhibit "F" hereto). At the City's request, Clyde G. Nelson, City Attorney, sent a letter to Beckstead denying any request for reimbursement. (Exhibit "G" hereto)

14. The City received no further communications or demands for reimbursement from Beckstead until receipt by the City of a letter from Steven Fuller, his attorney, dated April 11, 2006 (Exhibit C to Second Amended Complaint).

15. The City replied stating that it chose not to reconsider its position by letter of Clyde G. Nelson dated May 24, 2006. (Exhibit "H" hereto)

16. Beckstead, through his attorney Steven Fuller, submitted a Notice of Claim to the City on or about July 31, 2006. (Exhibit I) Beckstead claimed that he was entitled to the sum of $10,603.60, and referenced the installation of a 10-inch line on 1800 East Street. The waterline constructed by Beckstead was a 12-inch waterline on 800 East Street.

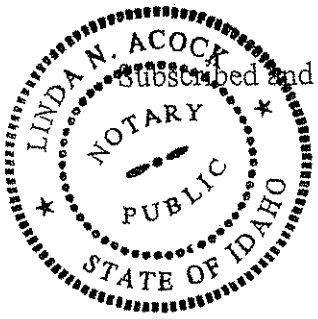
17. The City enacted Ordinance No. 461 on August 3, 1981. (Exhibit "J" hereto)

18. The City enacted Ordinance No. 2004-7 on December 13, 2004. (Exhibit "K" hereto)

19. No fees have been paid to the City of Preston for connections to the 800 East waterline since September and October, 2004.

DATED this 19 day of June, 2007.

Jerry C. Larsen
Jerry C. Larsen, City Clerk



Subscribed and sworn to before me this 19 day of June, 2007

Linda Acock
Notary Public for Idaho
Residing at Preston ID
Comm. Expires 7-15-2010

Pedestrian ways with right-of-way width of eight (8) feet or greater may be required where essential for circulation, or access to schools, playgrounds, shopping centers, transportation and other community facilities.

Section 4. Lot Requirements.

The lot size, width, depth, shape, and orientation and minimum setback lines shall comply with the maximum requirements of the zoning ordinance.

The minimum lot depth shall not be less than one hundred (100) feet and the depth-to-width ratio of the usable area of the lot not greater than three (3) to one (1).

Side lot lines shall be substantially at right angles or radial to street lines, except where other treatment may be justified.

Every lot shall have access to a public street, except in estate developments where lots may abut upon a private street furnishing satisfactory access to public streets.

Double frontage lots shall be avoided wherever possible.

CHAPTER 4

STREET AND UTILITY IMPROVEMENT REQUIREMENT

Section 1. General.

All improvements of streets, alleys, or easements which are required as a condition to plat approval shall be the responsibility of the subdivider; provided, however, that he may be allowed to meet the requirements by participation in an improvement district approved by the City.

Plans for the improvements herein required shall be prepared by an engineer registered in the State of Idaho.

Prior to the time of recording of the final plat the subdivider shall file with the City Engineer construction drawings for all improvements required in the portion of the subdivision contained in the final plat.

At the time of recording the final plat, the subdivider shall have previously constructed all required improvements and secured a certificate of completion from the engineer, or filed with the City Clerk a surety bond, or other acceptable guarantee, to ensure the actual construction of such improvements as submitted and approved. The improvements shall be constructed within one(1) year from the date of approval of the final plat provided, however, the City Council may extend the period one (1) year upon the showing of just cause by the subdivider. Such surety bond or other guarantee shall be in the amount of one hundred ten percent (110%) of the estimated cost of the improvements as determined by the City Engineer.

Prior to acceptance by the City of any improvements installed by the subdivider, two (2) sets of prints of the "as built" plans and specifications shall be certified by the subdivider's engineer and filed with the City Engineer.

Within ten (10) days after completion of improvements and submission of "as built" plans, the City Engineer shall certify the completion and acceptance of the construction and shall transmit a copy of said certification to the subdivider. If a surety agreement has been executed by the subdivider, the same shall be forwarded to the City Clerk. The City Clerk shall thereafter release said surety or guarantee upon application by the subdivider.

New electric, communication and television lines shall be installed underground in accordance with the standards of current edition of

National Electric Safety Code. When facilities are installed in public right-of-way, the location shall be approved by the City Engineer. When overhead utility lines exist within the property being platted, said existing overhead utility lines and any additions or replacements needed to increase the capacity or improve service reliability may remain overhead, provided, however, that any service drops into the platted area from said peripheral overhead lines shall be underground. When overhead utility lines exist on the periphery of the property of five (5) acres or less being platted then the utility lines within the platted area may be overhead. When, as a result of the subdivision development, it is necessary to relocate, renew or expand existing facilities within the platted area, the subdivider shall make the necessary arrangements with the serving utility for these installations to be placed underground. The subdivider shall arrange with the serving utility for, and be responsible for, the cost of underground service lines to approved street light locations, as required. Those electric lines of greater than 3,000 KVA (kilovolt Amperes) capacity is rated by the American Standards Association are excluded from the requirements of this section.

All underground utilities to be installed in streets shall be constructed prior to the surfacing of such street. Service stubs to platted lots within the subdivision for underground utilities shall be placed to such length as not to necessitate the disturbance of street improvements when service connections are made. If connected to a City-owned system, application and fee shall be the responsibility of the developer in accordance with City requirements.

Section 2. Required Improvements.

Verticle curbs and gutters and asphalt plant-mix pavement shall be required on all streets in a proposed subdivision or dedication; except the City Council may waive the requirements for curb and gutter for minor streets in a subdivision composed of one (1) acre lots or larger.

Concrete walks shall be provided. Where installation of sidewalks is not considered necessary by the City, the requirement may be waived.

Proper and adequate provision shall be made for disposal of storm waters. The type, extent, location, and capacity of drainage facilities shall be determined for the individual subdivision by the City Engineer.

Central sanitary sewer systems shall be installed in all subdivisions where they are within the service area of an existing public system and can be reached by a reasonable extension of said public system. Construction plans and specifications for central sanitary sewer extension shall be approved by the agency controlling the system and the Appropriate Health Authority.

In a subdivision where central water is proposed but a central sanitary sewer system is not available, such subdivision may make alternate provisions for sewage disposal in accordance with the requirements of the Appropriate Health Authority and the City Council.

Monuments shall be installed in accordance with current City standards at all corners, angle points, and points of curve and all street intersections.

In proposed subdivision of fifty or more lots the Council may additionally require a dedication to the public of an open area or areas for public parks and playgrounds of approximately one-tenth (1/10) the area platted. Such public open areas shall be graded with due consideration for drainage. Landscaping and other improvements following final approval of the plat shall be the responsibility of the City.

All improvements required by this ordinance shall be in accordance with City of Preston's Current Standard Specifications for Street Sanitation Sewer & Domestic Water Improvements for Development of Subdivisions.

Section 3. Division of Cost of Improvements.

Cost of improvements which are required under the provisions of this chapter, as well as the cost of other improvements which the developer may install, shall be shared between the developer and the City according to the following schedule (it further being herein construed that the City shall in no way share in the cost of any improvements not expressly noted within this section):

Facility Description	Subdivider % of Cost	City of Preston % of Cost
1. Easements and rights-of way; grading of streets; curb and gutter; cross drains; dip stones and connecting piping; driveways; sidewalks; street signs; fire hydrant; companion valves; service lines; thrust blocks; sanitary sewer manholes and laterals "on-site" culinary water laterals.	100%	100% of cost of fire hydrants only
2. Base gravel course; street paving; bridges and culverts.	100% for all streets requiring road widths of 50 feet back to back of curb and gutter or less.	100% for all additional width required by the city in excess of 50 feet back to back of curb and gutter.
3. Street lighting	100% of easements & rights of way	100% of facilities.
4. Culinary water mains and valves "on-sit" & "on-site" oversized.	100% of all costs of mains and laterals 6 inches inside nominal diameter or less. All mains in excess of 6 inches inside nominal diameter when not "oversized" as defined in this ordinance.	All additional costs to install "oversized" facilities; said costs to be determined by the City Engineer
5. Sanitary sewer mains, on-site".	100% of all costs of mains 8 inches inside nominal diameter or less. All mains in excess of 8 inches inside nominal diameter when not "oversized" as defined in this ordinance.	All additional costs required to install "oversized" facilities said costs to be determined by the City Engineer.
6. Culinary water & sanitary sewer facilities; and steeets "off-site".	Refer to Paragraph 1 below.	Refer to Paragraph 1 below
7. Storm surface run-off facilities "on-site" and "off-site"	100%	100%
8. Storm sewer facilities.	Special negotiations with the Council.	Special negotiations with the Council.

EXHIBIT "A-3"

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1. Whenever any intervening property ("off-site") is benefited by the installation of any of the required facilities, the subdivider may pay the cost of such facilities to the City, such cost to be determined by competitive bids solicited by the City together with verified engineering costs required therefor. The City shall thereafter enter a deferred credit in its books and records and shall charge the benefited intervening property owners the fee rates for sewer and water connections in effect at the time such connections are made. Such fees shall then be returned to the subdivider to reimburse the costs of the installation of the facilities; such agreement for reimbursement shall extend for a maximum period of 5 years from initial date of agreement after which time no further reimbursement shall be made to the subdivider. The City may also elect to reimburse the subdivider for such "off-site" facilities in full or in part after the subdivider has furnished the City with acceptable evidence that an agreed number of housing units are occupied. No interest shall accrue or become payable on such reimbursement. Engineering drawings showing benefited property shall be prepared by the City Engineer and copies forwarded to the sewer, water and streets department of the City.

CCE598

CHAPTER 5

MODIFICATION AND WAIVERS

Where the City Council finds that extraordinary hardships may result from the strict compliance with these regulations, it may waive the regulations so that substantial justice may be done and the public interest secured provided that such waiver will not have the effect of nullifying the intent and purpose of the City Comprehensive Plan or these regulations.

The fact that an owner could realize a greater financial return by a use of his property that is contrary to these regulations is not a sufficient reason for change. Hardship cannot be proven where it can be shown that property was purchased with the knowledge of existing restrictions, nor can hardship be claimed in terms of prospective sales or potential customers.

The standards and requirements of these regulations may be modified by the City Council after recommendation by the Planning Commission in the case of a plan and program for a complete community or neighborhood unit, which in the judgment of the City Council provides adequate public spaces and improvements for the circulation, recreation, light, air, and service needs of the tract when fully developed and populated.

In granting a modification and waiver, the City Council may require such conditions as will secure substantially the objectives of the standards or requirements so waived or modified.

CHAPTER 6

PENALTIES

Section 1. Penalties.

any person, firm, or corporation using an unapproved and unrecorded plat in the sale of subdivided land or violating any of the terms or provisions of these subdivision regulations shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not more than three hundred dollars ($300.00) or imprisonment for not more than six (6) months or both such fine and imprisonment. Each day that a violation is permitted to exist may constitute a separate offense.

EXHIBIT "A-4"

Before this claim is audited it ...e approved by the office authorizir ...ervices rendered or materials furnished. This Voucher will be ...nted for approval on the second Mond... the month and will be paid on the Monday following.

CITY OF PRESTON, IDAHO 1159

DEBTOR TO DATE 12/16/03

NAME Scott Beckstead ADDRESS 711 E 450 N Preston ID 83263

NOTE: ITEMS MUST BE ENTERED IN DETAIL ON THIS VOUCHER

DATE:	ITEM:	AMOUNT:	
	Reimbursement for 6 inch to 12 inch		
	water line upgrade for Creamery		
	Hollow Subdivison.		
Approved by:	Total	7461	00

CITY OF PRESTON

The undersigned, being first duly sworn, says that the within account is true and correct; that the services or articles mentioned above have been furnished, and that no part of same has been allowed or paid.

Scott D. Beckstead
Claimant sign here.

FUND:

10–411 Council	10–491 Industrial Park
10–413 Office	10–493 Unemployment
10–414 Shop	20–431 Street Administration
10–415 Clerk	20–443 Street Cleaning
10–416 Legal	20–444 Street Maintenance
10–417 P & Z	20–445 Street Snow & Ice
10–418 Economic Development	22–439 Recreation
10–419 Liability Insurance	60–434 Water (61) 7461.00
10–421 Police	62–435 Sewer
10–422 Dispatching	62–436 Sewer Plant
10-424 Building Inspection	64–433 Garbage
10–427 Animal Control	66–440 Hydro
10–438 Parks	Misc.

4595
Warrant No.

004595

:F ESTON
'0 '.'EST ONEIDA
PRESTON ID 83263

#	DESCRIPTION	AMOUNT	GL Number
	REIMBURSEMENT UPGRADE FROM 6" TO 12" LINE	7,461.00	60-434-61

Check #: 4595
Check Date: 12/17/2003
Check Amount: $7,461.00

Check Issued To:
SCOTT BECKSTEAD
'11 EAST 4TH SOUTH
PRESTON ID 83263

TOTAL AMOUNT 7,461.00

Check On Demand Drawn On Wells Fargo Bank

EXHIBIT "C"

Water Line Connections since November 2002 along 8th East

West Side of 8th East

Homeowner	Address	Water Connection Paid	Amount	Building Permit Approved
Jerre Tewes	203 N 8th E	10/19/2004	2500.00	10/2004 #53 - 2285
Ronald Owen	287 N 8th E	09/29/2004*	*	10/2005 #53 - 3273
Terry Orton	291 N 8th E	09/29/2004*	*	03/2006 #53 - 9037
Dustin Jensen	295 N 8th E	09/29/2004*	*	05/2005 #53 - 9344
~~Dustin~~ Dallas Ward	303 N 8th E	09/24/2004*	*	09/2006 #53 - 2250

East Side of 8th East

~~Cameron Nielson~~	~~48 N 8th E~~	~~07/27/2004~~	2500.00	~~03/2005~~ Cancelled
~~Brett Jensen~~	440 N 8th E	~~04/14/2003~~	2500.00	04/2003 #53 - 1611

*Jensen Estates, paid by Jessica Jensen $10,000.00

EXHIBIT "D"

WATER SERVICE ORDER 1380

Date Issued: 10/19/2004 Employee: LINDA
Service Address: 203 NORTH 8TH EAST (APPROX.)
Billing Address:
Owner Name: JERRE TEWS
Owner Phone: –
Renter Name:
Renter Phone: –
Renter Deposit: .00
Garbage Can: No

WATER TURN ON: YES Reason: PAID FOR A NEW WATER CONNECTION
WATER TURN OFF:

Customer Signature: X _____

Watermaster Signature: _____

Date: 11-16-04

WATER SERVICE ORDER 1257

Date Issued: 07/28/2004 Employee: LINDA
Service Address: 48 N 8TH E
Billing Address:
Owner Name: CAMERON NIELSON
Owner Phone: –
Renter Name:
Renter Phone: –
Renter Deposit: .00
Garbage Can: No

WATER TURN ON: YES Reason: PAID FOR NEW CONNECTION
WATER TURN OFF:

Customer Signature: X _____

Watermaster Signature: _____

Date: 8-24-04

EXHIBIT "E-1" 184

WATER SERVICE ORDER 1347

Date Issued: 09/29/2004 Employee: LINDA
Service Address: 295 NORTH 8TH EAST
Billing Address:
Owner Name: JESSICA JENSEN
Owner Phone: –
Renter Name.
Renter Phone: –
Renter Deposit: .00
Garbage Can: No

WATER TURN ON: YES Reason: PAID FOR NEW WATER CONNECTION
WATER TURN OFF:

Customer Signature: X _____

Watermaster Signature: _____

Date: 10-12-04

Dustin Jensen

WATER SERVICE ORDER 1360

Date Issued: 09/29/2004 Employee: LINDA
Service Address. 303 NORTH 8TH EAST
Billing Address:
Owner Name: JESSICA JENSEN
Owner Phone: –
Renter Name.
Renter Phone: –
Renter Deposit: .00
Garbage Can: No

WATER TURN ON: YES Reason: PAID FOR NEW WATER CONNECTION
WATER TURN OFF:

Customer Signature: X _____

Watermaster Signature. _____

Date: 10-12-04

Dallas Ward

EXHIBIT "E-2" 185

WATER SERVICE ORDER 1349

Date Issued: 09/29/2004 Employee: LINDA
Service Address: [redacted] NORTH 8TH EAST
Billing Address:
Owner Name: JESSICA JENSEN
Owner Phone: –
Renter Name:
Renter Phone: –
Renter Deposit: .00
Garbage Can: No

WATER TURN ON: YES Reason: PAID FOR NEW WATER CONNECTION
WATER TURN OFF:

Customer Signature: X _____

Watermaster Signature: _____

Date: 10-12-04

Ronald Owen

WATER SERVICE ORDER 1348

Date Issued: 09/29/2004 Employee: LINDA
Service Address: 291 NORTH 8TH EAST
Billing Address:
Owner Name: JESSICAN JENSEN
Owner Phone: –
Renter Name:
Renter Phone: –
Renter Deposit: .00
Garbage Can: No

WATER TURN ON: YES Reason: PAID FOR NEW WATER CONNECTION
WATER TURN OFF:

Customer Signature: X _____

Watermaster Signature: _____

Date: 10-12-04

Terry Orton

EXHIBIT "E-3" 186

Farm Lands and Ranches
Residential Properties

Income Properties
Business Opportunities

SCOTT
BECKSTEAD
REAL ESTATE CO.

32 WEST ONEIDA - PRESTON, IDAHO 83263
PHONE (208) 852-3199

October 22, 2004

Mayor Neal Larson
City of Preston
70 West Oneida
Preston, Idaho 83263

Dear Mayor Larson,

Under the Preston Subdivision Ordinance Section 16.28.030 paragraph B, a subdivider is entitled to reimbursement for costs associated with "off site" improvements required by the city in the process of subdivision approval. One such "off site" improvement was a water line on 800 East that was required of me to install for approval of the Creamery Hollow Estates Subdivision. I understand that several water connections have been made to that line.

I would like to arrange a time that we could meet to discuss the process of such reimbursement. Also, if there is any information that you may need from me showing actual costs of installation of that line, please let me know.

I can be reached at 852-3199 which is the office number or on my cell phone which is 339-1512. I would be happy to meet you at any time.

Sincerely,

Scott L. Beckstead

Scott L. Beckstead

EXHIBIT "F"

REALTOR®

CITY OF PRESTON

CLYDE G. NELSON
CITY ATTORNEY
172 S. MAIN
P. O. BOX 797
SODA SPRINGS, IDAHO 83276

TELEPHONE
(208) 547-2135

FACSIMILE
(208) 547-2136

November 16, 2004

Scott Beckstead
Beckstead Real Estate Co.
32 West Oneida
Preston, ID 83263

Re: Subdivision Ordinance / Creamery Hollow Subdivision

Dear Scott:

Mayor Larson has asked that I reply to your letter of October 22, 2004, in regard to your request to be reimbursed for "costs associated with 'off-site' improvements required by the city in the process of subdivision approval." You are suggesting that you are entitled to reimbursement for improvements on a waterline on 800 East Street.

The section to which you refer is §16.28.030(B). That section reads as follows:

"16.28.030 B. Whenever any intervening property ("off-site") is benefitted by the installation of any of the required facilities, the subdivider may pay the cost of such facilities to the city, such costs to be determined by competitive bids solicited by the city together with verified engineering costs required therefor. The city shall thereafter enter a deferred credit in its books and records and shall charge the benefited intervening property owners the fee rates for sewer and water connections in effect at the time such connections are made. Such fees shall then be returned to the subdivider to reimburse the cost of the installation of the facilities; such agreement for reimbursement shall extend for a maximum period of five (5) years from initial date of agreement after which time no further reimbursement shall be made to the subdivider. The city may also elect to reimburse the subdivider for such "off-site" facilities in full or in part after the subdivider has furnished the city with acceptable evidence that an agreed number of housing units are occupied. No interest shall accrue or become payable on such reimbursement. Engineering drawings showing benefited property shall be prepared by the city engineer and copies forwarded to the sewer, water and streets department of the city."

This section does not require the city to reimburse you and repeatedly refers to an agreement entered into between the parties which would allow for reimbursement to the subdivider if the subdivider had paid the City for the construction improvements. You did not.

EXHIBIT "G-1"

188

Re: Subdivision Ordinance / Creamery Hollow Subdivision

The agreement must be approved prior to the development. In addition to the section requiring a contract prior to the construction, the cost of the construction is to be determined by "competitive bids solicited by the city together with verified engineering costs required therefor." If you had desired reimbursement for these improvements, it would have been necessary that an agreement be executed, that competitive bids be solicited pursuant to that agreement and that an engineer verify the costs required for the construction. There was no agreement, there were no competitive bids, no verified engineering study, and no payment by you to the City.

This section is similar to those requirements set forth for local improvement districts. (Chapter 17, Title 50, Idaho Code). To create a local improvement district there must first be a resolution to create the district. Included within the resolution is a requirement that the total costs and expenses of the project and percentage that will be paid by the city and the local improvement district be included. A determination must be made as to which properties will be benefitted by the improvements, and how they will be benefitted. For example, the engineer could determine that an intervening piece of property could not be developed, and only one connection would be attributed to that property. In another intervening piece of property, the engineer could determine that the property could be developed into one hundred lots. An amount would be paid to the City, but the amount paid to you as reimbursement, would be based upon the total number of lots that could be developed on the intervening properties verses the number of lots which you have developed. In addition, you only paid for a portion of the cost of the line, and any payment by the City to you would have to based upon a percentage of the total cost of the line.

I think that the reasons set forth above are quite clear as to why your request would have to be rejected. I hope this letter answers your questions as to the City's position. If you have any additional questions, please feel free to contact me.

Sincerely,

CLYDE G. NELSON

CGN:jn
cc: Mayor and City Council
Darrell Wilburn

EXHIBIT "G-2"

CITY OF PRESTON

CLYDE G. NELSON
CITY ATTORNEY
172 SOUTH MAIN STREET
P. O. BOX 797
SODA SPRINGS, IDAHO 83276

TELEPHONE
(208) 547-2123

FACSIMILE
(208) 547-2136

May 24, 2006

Steven R. Fuller
Attorney at Law
24 North State Street
P.O. Box 191
Preston, ID 83263

Re: Scott Beckstead / Requested Reimbursement

Dear Steve:

Thank you for your letters of May 19, 2006, and April 11, 2006. I did discuss your first letter with the City Council at the last meeting which I attended on May 8, 2006. The City Council reviewed your letter, and my prior letter to Scott Beckstead dated November 16, 2004. The City Council chose not to reconsider its prior response as contained in my letter.

In addition thereto, I do not believe that Scott has complied with §50-219 and §6-906, Idaho Code. I direct your attention to the case of Magnuson Properties v. Coeur D' Alene 138 Idaho 166.

If you have any questions, please contact me.

Sincerely,

CLYDE G. NELSON

CGN:sh
cc: City Council

EXHIBIT "H"

NOTICE OF CLAIM

Claimant: Scott Beckstead
Scott Beckstead Real Estate Company

To: City Clerk, Mayor and City Council
City of Preston, Idaho

1. *CONDUCT AND CIRCUMSTANCES REGARDING CLAIM:*

In October, 2003, the Claimant, Scott Beckstead acting on behalf of Scott Beckstead Real Estate Company, installed a ten-inch water line along 1800 East in Preston, Idaho, as a requirement imposed by the City of Preston for approval of a subdivision known as Creamery Hollow Estates. Under the applicable Preston City Ordinance, §16.2.030(B) in effect at the time the water line was constructed, Mr. Beckstead was entitled to reimbursement for the "off-site" improvements made which were to be paid as additional connections were made to the water line over a period of five years. It is the understanding of the Claimant that water connections have been made to the water line along 1800 East in Preston, but no reimbursement has been made to the Claimant. A previous claim was filed by Mr. Beckstead with the City of Preston on October 22, 2004. Each connection to the water line along 1800 East in Preston, Idaho, gives rise to a separate and distinct claim against the City of Preston until full reimbursement has been made. The City of Preston has failed and refused to pay the legitimate claims of the Claimant and has denied him reimbursement pursuant to the set ordinance despite the fact that water connections have been made to the water line along 1800 East.

EXHIBIT "I-1"

2. TIME AND PLACE OF DAMAGE:

It is the understanding of the Claimant that water connections have been made and water connection fees received by the City of Preston In 2004, 2005 and 2006 which would be sufficient to pay or partially pay the Claimant for the sums he has expended pursuant to the ordinance.

3. NAMES OF PERSONS OR ENTITIES INVOLVED:

Scott Beckstead and Scott Beckstead Realty Company.

4. AMOUNT OF DAMAGES:

The amount of this claim for labor, costs and materials is the sum of $10,603.60.

RESPECTFULLY SUBMITTED this 31st day of July, 2006, by Steven R. Fuller, Attorney for Scott Beckstead and Scott Beckstead Real Estate Company, 24 North State, Preston, Idaho 83263 - Tel. No. (208) 852-2680.

STEVEN R. FULLER
Attorney for Scott Beckstead and
Scott Beckstead Real Estate Company

cc: Scott Beckstead

EXHIBIT "I-2"

ORDINANCE NO. 461

AN ORDINANCE OF THE CITY OF PRESTON, IDAHO, PERTAINING TO THE CONSTRUCTION OF SEWER OR WATER LINES WITHIN THE CITY BY PROPERTY OWNERS AT THEIR OWN EXPENSE; REQUIRING PROPERTY OWNERS WHO LATER CONNECT TO SAID LINES TO PAY A PROPORTIONATE COST OF SAID LINES; PROHIBITING CONNECTION TO SAID LINES WITHOUT PAYMENT OF SAID COSTS; ESTABLISHING A PROCEDURE FOR VERIFYING COSTS OF CONSTRUCTION, APPORTIONING THE COSTS OF CONSTRUCTION AND FILING A CERTIFIED STATEMENT OF COSTS AND PAYMENTS OF COSTS; PROVIDING FOR COLLECTION OF FUNDS AND DISTRIBUTION THEREOF AND PLACING A TIME LIMIT THEREON; PROVIDING THAT THE SAME SHALL NOT APPLY TO SUBDIVIDERS; PROVIDING FOR A PENALTY FOR VIOLATION OF ORDINANCE AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, there are times when residents of the City of Preston, Idaho, desire to connect to the municipal water or sewer system and make application therefore, without the formation of a local improvement district for construction of the necessary water or sewer line which will provide service to the applicants' property as well as to other property belonging to residents of the City and for which the applicants desire to pay in full for said line or lines at the time of construction; and

WHEREAS, in such instances there are some residents who own property for which service will be provided by said line or lines and who do not wish to join in the construction of said lines or to pay their proportionate cost thereof; and

WHEREAS, the public health, safety, and welfare of the residents of the City require the City to encourage the construction and development of such water and sewer lines within the corporate limits of the City;

NOW THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF PRESTON, IDAHO, AS FOLLOWS:

Section 1. Whenever any water or sewer line is to be constructed by a property owner or owners within a certain area of the City which encompasses a greater area than the property owner-applicants' property, and which is connected to the municipal system, and which is fully paid for by the property owner at the time of construction, the City may require any person or property owner, thereafter desiring to connect to said line or lines to pay to the City Clerk of the City of Preston, Idaho a sum of money equal to the proportionate cost of construction of said line or lines which such person or property owner

would have paid had such person or property owner participated in the cost of the initial construction.

Section 2. No permit to connect to said line or lines shall be granted by the City to any person desiring to connect to the same, and no person shall connect to said line prior to payment to the City Clerk of that person's proportionate share of the cost of construction of said line.

Section 3. On completion of said line by the property owner or person constructing the same, said person shall file with the City Clerk a verified statement of the total cost of construction of said line. The City shall have the right to request such documentation as may be necessary to verify the cost alleged and may adjust these costs when, in the City Coucil's determination, the same are excessive.

Section 4. (a) Upon receipt of said verified statement the City Clerk or her designee shall compute the amount of said costs of construction attributable to properties which can be served by said water or sewer lines, when said property abutts, adjoins or is adjacent thereto, or said properties are benefited by such improvements, and such assessments shall be computed according to the front foot method, a square foot method, or a combination thereof, or in proportion to the benefits derived to such property by the improvements.

(b) After preparation of said computations the City Clerk or her designee shall prepare a certified statement setting forth the cost of construction attributable and assessed against each piece of property benefiting from said construction whose owner did not join in the payment in the initial cost of construction, and the City Clerk shall cause the same to be filed in the City records and recorded in the office of the County Recorder of Franklin County, Idaho.

Section 5. Any person or property owner who did not participate and share in the cost of construction who desires to connect to said line or lines shall, at the time of making said application to the City, pay to the City Clerk the amount computed by the City Clerk or her designee as the amount assessed against the property for the proportionate cost of construction in addition to any other fees for connection so assessed by the City. Upon payment in full of said sum

the City Clerk shall cause a permit for connection to be issued and shall file in the Office of the County Recorder of Franklin County, Idaho, a certified statement showing payment of said sum assessed against the property for construction.

Section 6. The City Clerk shall deposit those funds obtained from payment of the proportionate share of construction costs into a trust fund established for that purpose for the benefit of the original contributors or their successors in interest. As monies are paid into the fund, the City Clerk shall make distribution of the same to the person or persons originally paying for the cost of construction in the amounts that such person or persons are entitled. If the person owning property who originally paid for the cost of construction shall have transferred his interest therein to another, the City Clerk shall pay said sum to the owner of record at the time payment is made. If said property has been transferred to a third party pursuant to a contract of sale, the City Clerk shall make payment of said sum to the purchaser only if said contract authorizes the same and is filed in the Office of the City Clerk prior to said application for permit to connect.

Section 7. All water or sewer lines constructed under this ordinance shall be constructed only with the approval of the City Council, and said lines shall be constructed in accordance with all State of Idaho and City specifications and standards and shall be constructed under the authority and supervision of the City. All lines so constructed, and their appurtenances thereto, shall become the property of the City upon completion and acceptance by the City. Prior to said construction the applicant shall submit detailed plans and specifications for the proposed water or sewer lines to the City Council for approval.

Section 8. This ordinance shall not apply to subdividers of property within the City, and a subdivider shall construct all water and sewer lines at his own cost and expense in accordance with the subdivision ordinance of the City as well as any other applicable ordinances or regulations of the City.

EXHIBIT "J-3"

Section 9. After ten years from date of filing with the City Clerk of the verified statement of the initial person constructing said water or sewer line the City, its elected officials, officers, agents, and employees, shall be under no further obligation to transmit said money received from subsequent connectors to said line to the original persons constructing said line or the successors in interest, and no charges, other than connection fees normally assessed by the City shall be charged by the City against subsequent connectors to said lines after said time period has expired.

Section 10. Any person or persons who shall violate any provision of this ordinance shall be guilty of a misdemeanor, and shall be punished by imprisonment in the County Jail for a period not to exceed six months or a fine not to exceed $300.00 or by both such fine and imprisonment.

Section 11. If any section, paragraph, sentence, clause or phrase of this ordinance be declared unconstitutional or invalid for any reason, the remaining provisions of said ordinance shall not be affected thereby but shall remain in full force and effect.

Section 12. All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed, and this ordinance shall be in full force and effect from and after its passage and publication according to law.

PASSED AND APPROVED this 3rd day of August, 1981.

CITY OF PRESTON

By _____
Mayor

Attest:

_____
City Clerk

EXHIBIT "J-4"

ORDINANCE NO. 2004-7

AN ORDINANCE OF THE CITY OF PRESTON, IDAHO, REPEALING SECTION 16.28.030(B) OF THE PRESTON MUNICIPAL CODE RELATING TO REIMBURSEMENT TO SUBDIVIDERS FOR IMPROVEMENTS MADE UNDER THE SUBDIVISION ORDINANCE; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT WITH THIS ORDINANCE; WAIVING THE REQUIREMENT THAT THIS ORDINANCE BE READ ON THREE (3) SEPARATE OCCASIONS; AND ESTABLISHING AN EFFECTIVE DATE OF THIS ORDINANCE.

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF PRESTON, IDAHO, AS FOLLOWS:

Section 1: Section 16.28.030(B) of the Preston Municipal Code is hereby repealed.

Section 2: All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed.

Section 3: The rule requiring that this ordinance be read on three (3) separate occasions is hereby waived.

Section 4: This ordinance shall be in full force and effect from and after its passage, approval, and publication according to law.

PASSED AND APPROVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF PRESTON, IDAHO, this 13th day of December, 2004.

CITY OF PRESTON, IDAHO

NEAL LARSON, Mayor

ATTEST:

JERRY C. LARSEN, City Clerk